رسالة في الحكم الأصلي في دماء وأموال وأعراض الكفار



Essay Regarding the Basic Rule of the Blood, Wealth and Honour of the Disbelievers

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التبيان

Introduction:

Verily, all praise is due to Allāh and may His peace and blessings be upon our Prophet Muhammad and upon his family and his companions until the Last Day.

To proceed:

The purpose of this essay is to explain and clarify the basic rule (*Asl*) regarding the blood, honour and wealth of the disbelievers and to illustrate the ways in which it becomes protected. The reason this work is necessary is due to the overwhelming misconceptions regarding this topic in general and the prevailing ignorance about this issue by most Muslims. There is a movement by the apologetic Muslims allied by the disbelieving Orientalists to redefine the principles and the laws of the religion of *Islām* to meet the standards of the "modernism" and "moderateness". And although these foreign elements are outright rejected and refuted easily, it is because of the ignorance and complacency from the Muslims themselves which has allowed the plots of the enemies to progress.

It is none other than these allied elements of disbelievers, apologists and defeatist Muslims, which accepted such slogans as: "*Islām* Means Peace", and "*Jihād* is for Self-Defense Only", and "Democracy is Compatible With *Islām*", etc. And just as these slogans are baseless, devoid of evidence and contrary to the fundamentals of the religion, Allāh, the Most High, has uncovered the plots of His enemies and made their deception easy to see for those Muslims who sincerely seek to lean their *Dīn*.

O *Muslimūn*, do not seek to please your enemies regarding your *Dīn*. *Islām* is not in needs of defeatist and apologetic rhetoric. *Islām* is correct and *Kufr* is falsehood regardless of what the disbelievers think. And the religion of Allāh will dominate the Earth regardless of their plots and schemes. And Allāh, the Most High, said:

يُرِيدُونَ أَن يُطْفِؤُواْ نُورَ اللّهِ بِأَفْوَاهِهِمْ وَيَأْبَى اللّهُ إِلاَّ أَن يُتِمَّ نُورَهُ وَلَوْ كَرِهَ الْكَافِرُونَ

They (the disbelievers) wish to extinguish Allâh's Light with their mouths, but Allâh will not allow except that His Light should be perfected even though the Kâfirûn (disbelievers) hate (it). [1]

As for the content itself, we have researched the books of knowledge within our means and abilities and produced our references for the reader to verify our translations and sources. Wherever possible, we have even provided the publication information to make this research simpler. As for the quotations from the people of knowledge, then some of them are found within the context of jurisprudence-oriented (*Fiqhī*) discussions of the jurists from the various schools of thought (*Mathāhib*) as well as other than them. So although certain finer points may be discussed in these quotations, our goal in presenting them was not to enter into detailed explanation of all of these issues; rather we have presented them to show that these jurists and scholars and *Hadīth* specialists have understood the basic rule (*Asl*) regarding the blood, honour and wealth of the disbelievers. And may the mercy and blessings of Allāh be upon our Prophet and upon his family and companions until the Last Day.

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[1] *At-Tawbah*, 32

Evidence from the *Sharī'ah* Regarding the Basic Rule (*Asl*) of the Blood, Wealth and Honour of the Disbelievers

The evidence of the *Sharī'ah* indicates that the basic rule (*Asl*) is that their blood and wealth is lawful (*Halāl*). This is indicated by the following evidences:

Allāh, the Most High's, statement:

فَإِن تَابُواْ وَأَقَامُواْ الصلاةَ وَآتَوُاْ الزكاةَ فَخَلوا سَبِيلَهُمْ

But if they repent and perform *As-Salat* (*Iqamat-as-Salat*), and give *Zakat*, then leave their way free.

And Allaah, the Most High's, statement:

فَإِن تَابُواْ وَأَقَامُواْ الصلاةَ وَآتَوُاْ الزكاةَ فَإِخْوَانُكُمْ فِي الدين

But if they repent, perform *As-Salāt* (*Iqāmat-as-Salāt*) and give *Zakāt*, then they are your brethren in religion. [2]

And the *Hadīth*: ***"I have been ordered to fight the people until they say 'Lā ilāha ill-Allāh.' For if they say that, then their blood and property are safe from me, except with its rights and their account will be with Allāh."*** [3]

And the *Hadīth*: ***"Whoever prays our prayer and faces our Qiblah and eats from our slaughter, then that is a Muslim who has the protection of Allāh and the protection of His Messenger. So do not disobey Allāh concerning his protection."*** [4]

And Maymūn Ibn Sayāh asked Anas Ibn Mālik saying: "O Abū Hamzah, what is it that makes the blood and the wealth of the slave (i.e. human) unlawful (i.e. protected)?" He said, "Whoever testifies that there is nothing worthy of worship but Allāh and faces our *Qiblah* and prays our prayer and eats from our slaughter; then he is a Muslim. For him is what is for the Muslims and upon him is what is upon the Muslims." [5]

And Abū Hurayrah, may Allāh be pleased with him, narrated that the Messenger of Allāh صلى ا عليه و سلم said: ***"Do not nurse grudges and do not bid him out for raising the price and do not nurse aversion or enmity and do not enter into a transaction when the others have entered into that transaction and be as fellow-brothers and servants of Allāh. A Muslim is the brother of a Muslim. He neither oppresses him nor humiliates him nor looks down upon him.***

[2] A*t-Tawbah*, 11

[3] Agreed upon from Ibn 'Umar, may Allāh be pleased with them

[4] Narrated by Al-Bukhārī

[5] Narrated by Al-Bukhārī

The piety is here," (and while saying so) he pointed towards his chest thrice. ***"It is a serious evil for a Muslim that he should look down upon his brother Muslim. All things of a Muslim are inviolable for his brother in faith; his blood, his wealth and his honour."*** [6]

Imām Muslim entitled the chapter in which he narrated this *Hadīth*: "Chapter: It Is Forbidden To Perpetrate Atrocity Upon A Muslim, To Humiliate Him, To Insult Him, And His Blood Is Inviolable As Is His Honour And Wealth." And Ibn Mājah entitled the chapter: "Chapter: The Sanctity of the Blood of the Believer and His Wealth."

And from Abū Sa'īd, may Allāh be pleased with him, said: "The Messenger of Allāh صلى ا عليه و سلم said in the Farewell Hajj: ***"Verily the most sacred days is this day of yours, and verily the most sacred of months is this month of yours, and verily the most sacred of cities is this city of yours. And verily your blood and your money is sacred upon you like this day of yours in this month of yours in this city of yours."*** [7]

So the point from what has passed is that the *Sharī'ah* indicates that when a person enters *Islām*, his blood and wealth become protected at that time. So what this implication necessitates is that prior to this, their blood and wealth are lawful (i.e. not protected). Otherwise, if their blood and wealth was already protected prior to their entering *Islām*, then the above verses and *Ahādīth*, about the blood and wealth of Muslims being protected, would be redundant and meaningless. This is because it would not be logical to point to one specific category (i.e. the believer) and exclude the other (i.e. the disbeliever) for these rights if both categories are equally entitled to them. Otherwise, the narrations would be phrased as: "*All things of a human are inviolable for his fellow humans; his blood, his wealth and his honour."* Therefore the conclusion is that the second group (i.e. the disbelievers) are not afforded the inviolability of the first group (i.e. the believers) as it relates to their blood, wealth and honour. And this indicates their permissibility in the basic ruling (*As*l).

And this rule in the language as it relates to the principles of jurisprudence (*Usūl Al-Fiqh*) is referred to as "*Mafhūm Al-Muwāfaqah*" (the understanding of compliance) and "*Mafhūm Al-Mukhālafah*" (the understanding of the opposite).

Explaining the Rules: "Mafhūm Al-Muwāfaqah" & "Mafhūm Al-Mukhālafah"

As for the "*Mafhūm Al-Muwāfaqah*" (the understanding of compliance), then this is like when Allāh, the Most High, said:

إما يَبْلُغَن عِندَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلاهُمَا فَلاَ تَقُل لهُمَآ أُف وَلاَ تَنْهَرْهُمَا وَقُل لهُمَا قَوْلاً كَرِيمًا

[6] Narrated by Muslim in full, and by At-Tirmithī, Abū Dāwūd, Ibn Mājah and Ahmad with shorter phrasings, all mentioning "All things of a Muslim are inviolable for his brother in faith: his blood, his wealth and his honour.", but in different order with slightly different phrasings.

[7] Narrated by Ibn Mājah and *Shaykh* Al-Albānī authenticated it in "*Sahīh Ibn Mājah* ", #3,176

"If one of them or both of them attain old age in your life, say not to them: '*Uff*' (i.e. a word of disrespect), nor shout at them but address them in terms of honour." [8]

So therefore, if saying "*Uff* " to one's parents is prohibited, then obviously beating them would be held at an even greater level of prohibition. This is understood because although the worse crime (i.e. beating) was not mentioned within the text of this prohibition specifically, it is understood based upon the rule: "*Mafhūm Al-Muwāfaqah*" (the understanding of compliance), that whatever is equal to or even worse than what has been prohibited; then likewise that is prohibited as well and held at an even higher level of prohibition.

As for the "*Mafhūm Al-Mukhālafah*" (the understanding of the opposite), then this is like when Allāh said:

وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُم مَاتَ أَبَدًا وَلا تَقُمْ عَلَى قَبْرِهِ

"And never pray (funeral prayer) upon any of them (i.e. the hypocrites) who dies, nor stand at his grave." [9]

So because the disbelieving hypocrites were those whom Allāh specifically identified as being prohibited to have the funeral prayer performed upon and their graves visited, then this necessitates that the Muslims are those who *are* to be prayed upon and whose graves *are* to be visited. And this is understood by the rule: "*Mafhūm Al-Mukhālafah*" (the understanding of the opposite), because if we say the disbelievers are those whom Allāh specified a prohibition regarding something, then this necessities that the opposite ruling would apply for those who are opposite to them (i.e. the believers). So this is the explanation for the rule: "*Mafhūm Al-Mukhālafah*", which is also referred to as: "*Dalīl Al-Khitāb*". [10]

Discussing the different ways a phrasing can indicate something, Ibn Taymiyyah said, "Or it could indicate that what the ruling was mentioned regarding, is specific and it negates it off of whatever is other than it, as it is in '*Mafhūm Al-Mukhālafah* ', if the thing which would result in generality is present and only one of the types was specifically mentioned." [11]

And he said, "And the jurists say regarding the indication of the spoken and the unspoken and it (i.e. the spoken and the unspoken) is whatever the Legislator stated – and it is Allāh and His Messenger – and that which they have not stated. Sometimes what is indicated by the unspoken is more deserving of the ruling than that which was spoken, and it is '*Mafhūm Al-Muwāfaqah* ' and sometimes it contradicts it, and it is

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[8] *Al-Isrā*, 23

[9] *At-Tawbah*, 84

[10] *Shaykh Al-Islām*, Ibn Taymiyyah, may Allāh be merciful to him, said: "So this is '*Mafhūm Al-Mukhālafah*', which is referred to as '*Dalīl Al-Khitāb*." – "*Majmū' Al-Fatāwa* ", Vol. 31/345

[11] "*Majmū' Al-Fatāwa* ", Vol. 15/446

'*Mafhūm Al-Mukhālafah* '. And sometimes is resembles it and that is the unrestricted comparison (*Qiyās*)." [12]

And the example of the prohibition of praying the funeral prayer for the disbeliever indicating the permissibility of praying the funeral prayer for the Muslims and visiting their graves was used by *Shaykh Al-Islām*, Ibn Taymiyyah frequently, as he said: **"And do not ever pray upon anyone of them who dies and do not stand at their graves."** Therefore, the '*Dalīl Al-Khitāb*' is that the believers are prayed upon and their graves are to be stood at." [13]

And in his discussion on the evidence for the obligation of the *Niqāb* (face-veil) and gloves for the Muslim woman, *Shaykh* 'Abdul-Qādir Ibn 'Abdul-'Azīz, may Allāh free him, said while discussing the *Hadīth*: ***"...and women in Ihrām should not wear Niqāb or gloves,'*** [14] "And this *Hadīth* indicates with its understanding – '*Mafhūm Al-Mukhālafah*' – that the woman in other than *Ihrām*, is to wear the *Niqāb* and the gloves." [15]

So this explains the rules: "*Mafhūm Al-Muwāfaqah*" and "*Mafhūm Al-Mukhālafah*", [16] with regards to how the sacredness and inviolability of the blood, wealth and honour of the Muslim, indicates the opposite ruling for those who take the opposite description (i.e. disbelief).

So look to the *Hadīth* of the Messenger of Allāh صلى ا عليه و سلم who said: ***"Whoever says 'Lā ilāha ill-Allāh,' and disbelieves in what is worshipped besides Allāh, <u>then his wealth and his blood are unlawful (i.e. protected)</u> and his account is for Allāh."*** [17]

Then look to the commentary on the above *Hadīth* by *Shaykh* Muhammad Ibn 'Abdul-Wahhāb, may Allāh be merciful to him, who said: "So his statement, ***'...and disbelieves in what is worshipped besides Allāh,'*** is an emphasis on the negation. <u>Therefore, his blood and wealth would not be unlawful (i.e. protected) except with that. Therefore, if he doubts or hesitates (i.e. about *Islām*), then his blood and wealth are not protected."</u> [18] And this is a clear usage of this rule as explained above.

[12] "*Majmū' Al-Fatāwa* ", Vol. 6/179

[13] "*Majmū' Al-Fatāwa* ", Vol. 3/399; also look to Vol. 24/330 & Vol. 24/346 & Vol. 27/448

[14] Narrated by Al-Bukhārī

[15] "*Al-Jāmi' Fī Talab Al-'Ilm Ash-Sharīf* ", Vol. 2/1,070

[16] For a more detailed discussion of these rules, refer to "*Irshād Al-Fuhūl* " Pg. 166 & 169, by Ash-Shawkānī, publication of "*Mu'assasat Al-Kutub Ath-Thaqāfiyyah* ", 4th Edition, 1414 H. and "*Al-Ihkām Fī Usūl Al-Ahkām* ", Vol. 7/335-365, by Ibn Hazm, publication of "*Dār Al-Kutub Al-'Ilmiyyah* ", Beirut and "*Muthakkirah Fī Usūl Al-Fiqh*", Pg. 283-290, by Muhammad Al-Amīn Ash-Shanqītī, publication of "*Maktabat Al-'Ulūmi Wal-Hikam* ", Al-Madīnah Al-Munawwarah; 5th Edition, 1422 H. and "*Al-Mustasfā Fī 'Ilm Al-Usūl* ", Pg. 264-274, by Abū Hāmid Al-Ghazālī, publication of "*Dār Al-Kutub Al-'Ilmiyyah* ", Beirut, 1st Edition, 1413 H.

[17] Narrated by Muslim

[18] Look to "*Ad-Durar As-Saniyyah*": "*Risālat Asl Dīn Al-Islām* " with the commentary by 'Abdur-Rahmān Ibn Hasan

The Characteristic of Disbelief is What Permits the Blood and the Wealth of the Disbelievers

As we see from the above evidences, it is the characteristic of *Īmān*, which protects the blood and wealth of the believers and this is what distinguishes them and their inviolability from the disbelievers. It is therefore the characteristic of disbelief (*Kufr*), which permits the blood and wealth of the disbelievers and eliminates their inviolability. And this is known by the texts as well as by common sense, as the jurisprudence-oriented rule: "*Mafhūm Al-Mukhālafah*" has demonstrated.

Shaykh Al- Islām, Ibn Taymiyyah, may Allāh be merciful to him, said while discussing the two types of apostasy (*Riddah*); the aggressive type and the type, which is unaccompanied (with aggression towards *Islām* and the Muslims): "Because the one who merely apostates; we only kill him for his changing his religion, then if he returns to the true religion, then that which permits his blood is removed, just as that which permits the blood of the original *Kāfir* is removed by him entering *Islām*." [19]

And in his discussion regarding the difference of opinion about the *Hadīth*: ***"A Muslim is not killed for a* disbeliever (*Kāfir*)*,"*** [20] Ibn Hajar, may Allāh be merciful to him, said: "And also the permissibility of the blood of a *Thimmī* is a common misconception due to the existence of the disbelief (*Kufr*) which is what permits the blood. But the tribute (*Thimmah*) is a preventative covenant (*'Ahd*), which stops the killing, while the grounds (i.e. for the permissibility of his blood) would still exist (i.e. his *Kufr*)." [21]

Therefore, we see that although the characteristic of disbelief (*Kufr*) is what permits the blood and wealth of the disbelievers [22] there are categories of security (*Amān*), which can protect their blood and wealth, while this characteristic remains.

The Securities Which Protect the Wealth and Blood of the Disbelievers

As for the securities which protect the blood, wealth and honour of the disbelievers, then they are generally classified into one of six general categories:

1. The Security (Amān) of Thimmah (tribute):

Allāh, the Most High, said:

[19] "*As-Sāram Al-Maslūl 'Alā Shātim Ar-Rasūl* ", pages 368-369 published by "*Dār Al-Kutub Al-'Ilmiyyah*", Beirut

[20] Narrated by Al-Bukhārī

[21] "*Fat'h Al-Bārī* ", Vol. 12/326; publication of "*Maktabat Dār As-Salām*" & "*Maktabat Dār Al-Fayhā'* ", 1st Edition, 1418 H.

[22] ...and not their hostility towards the Muslims, as the apologists, defeatists and "moderates" claim!

قَاتِلُواْ الَّذِينَ لاَ يُؤْمِنُونَ بِاللّهِ وَلاَ بِالْيَوْمِ الآخِرِ وَلاَ يُحَرِّمُونَ مَا حَرَّمَ اللّهُ وَرَسُولُهُ وَلاَ يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُواْ الْكِتَابَ حَتَّى يُعْطُواْ الْجِزْيَةَ عَن يَدٍ وَهُمْ صَاغِرُونَ

"Fight against those who believe not in Allāh, nor in the Last Day, nor forbid that which has been forbidden by Allāh and His Messenger and those who acknowledge not the religion of truth among the people of the Scripture, until they pay the *Jizyah* with willing submission, and feel themselves subdued." [23]

And in the *Hadīth* of Sulaymān Ibn Buraydah from his father who said, "When the Messenger of Allāh صلى ا عليه و سلم would place an *Amīr* over an army or platoon, he would advise him…" until he said, ***"…then if they refuse, then ask them for the Jizyah, and if they accept that, then accept it from them and leave them alone."*** [24]

Ash-Shāfi'ī, may Allāh be merciful to him, said: "Allāh, the Most High, said: **Fight against those who believe not in Allāh, nor in the Last Day, nor forbid that which has been forbidden by Allāh and His Messenger…** And Allāh, the Powerful, the Mighty, said regarding other than *Ahl Al-Kitāb*: **And fight them until there is no more *Fitnah* and worship is for Allāh (Alone).** So Allāh protected the blood of those who follow the religion of *Ahl Al-Kitāb* either by *Īmān* (i.e. becoming Muslim) or by paying the *Jizyah* with willing submission, while feeling themselves subdued." [25]

And Ibn Qudāmah said, "If he contracts the *Thimmah*, then it is upon him to protect them from the Muslims and the people of war and *Ahl Ath-Thimmah*, because he adhered to the covenant (*'Ahd*) by protecting them and due to this, 'Alī, may Allāh be pleased with him, said: 'Verily, they only paid the *Jizyah* so that their money would be like our money and their blood like our blood (i.e. protected)." [26]

2. The Security (Amān) of Jawār (seeking knowledge about Islām):

Allāh, the Most High, said:

وَإِنْ أَحَدٌ مِّنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّى يَسْمَعَ كَلاَمَ اللّهِ ثُمَّ أَبْلِغْهُ مَأْمَنَهُ

And if anyone of the *Mushrikīn* (polytheists) seeks your protection then grant him protection, so that he may hear the Word of Allāh (the *Qur'ân*), and then escort him to where he can be secure… [27]

Ibn Kathīr, may Allāh be merciful to him, said: "He, the Most High, says to His Prophet may the Blessings of Allāh and His Peace be upon him: **"And if anyone of the *Mushrikīn*…"** those whom I have ordered you to fight and made *Halāl* for you the

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[23] *At-Tawbah*, 29

[24] Narrated by Muslim and Ahmad

[25] "*Kitāb Al-Umm*", Vol. 4/405; published by "*Dār Al-Kutub Al-'Ilmiyyah*", Beirut; 1st Edition, 1413 H.

[26] "*Al-Mughnī* ", Vol. 12/828-829

[27] *At-Tawbah*, 6

permitting of the slaves and their money **"...seeks your protection.,,"** – in other words , seeks security (*Amān*) from you, then answer his request, until he hears the Words of Allāh, in other words the *Qur'ān*. You are to read it upon him and mention to him something from the matters of the *Dīn* with which you establish the proof (*Hujjah*) of Allāh upon him **"...and then escort him to where he can be secure,"** – in other words, and he is safe with continuous safety until he returns to his country and his state and his safe area. **"That is because they are a people who do not know..."** – in other words: 'We only legislated the safety of the likes of those ones so that they will know the Religion of Allāh and the *Da'wah* to Allāh will spread amongst His slaves." [28]

And Ibn Qudāmah said, "And whoever seeks security so that he can hear the words of Allāh and learn the legislations of *Islām*, then it is obligatory to give him that. Then he is returned to where he can be secure. We do not know any disagreement about this and this was the opinion of Qatādah, Al-Mak'hūl and Al-'Awzā'ī and Ash-Shāfi'ī, and 'Umar Ibn 'Abdul-'Azīz wrote (a declaration) to the people regarding that." [29]

3. The Security (Amān) of Sulh (treaty):

فَلَا تَهِنُوا وَتَدْعُوا إِلَى السَّلْمِ وَأَنتُمُ الْأَعْلَوْنَ

So do not form the *Hudnah* and ask not for peace, while you are having the upper hand. [30]

Ibn Qudāmah said, "And the meaning of '**...the *Hudnah*...**' is that a treaty (*Sulh*) is formed with the people of war upon abandoning the fighting for a period with a renewal or without a renewal. And it is called a '*Muhādanah* ', and '*Muwāda'ah*', and '*Mu'āhadah* ', and that is permissible with the evidence of Allāh, the Most High's, statement: **Freedom from (all) obligations (is declared) from Allāh and His Messenger to those of the *Mushrikīn*, with whom you made a treaty.** [31] And He, Glory be to Him, said: **But if they incline to peace, you also incline to it.** [32] And Marwān and Miswar Ibn Makhramah narrated that the Prophet صلى ا عليه و سلم formed a treaty with Suhayl Ibn 'Amr, at Al-Hudhaybiyah, to abandon the fighting for ten years and because there may have been a weakness in the Muslims. So they would form a '*Hudnah'* with them so that the Muslims would become stronger (in that time). And that is not allowed, except in accordance to the circumstances of the Muslims, such that either there is a weakness regarding fighting them, or if they hope for their (entering) *Islām* by forming a '*Hudnah '* with them, or that they would pay the *Jizyah* and follow the rulings of the religion, or other than that from the benefits. If this is affirmed, then it is not allowed to form a '*Hudnah* ' in totality without specifying a time period, because this results in the complete abandonment of the *Jihād*." [33]

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[28] "*Tafsīr Al-Qur'ān Al-'Athīm* ", Vol. 2/445 published by "*Dār Al-Fayhā'* ", Damascus and "*Dār As-Salām*", Riyādh, 2nd Edition, 1418 H.

[29] "*Al-Mughnī* ", Vol. 9/197

[30] *Muhammad*, 35

[31] *At-Tawbah*, 1

[32] *Al-Anfāl*, 61

[33] "*Al-Mughnī Wash- Sharh' Al-Kabīr* ", Vol. 10/517

And after he mentioned the conditions of the disbelievers regarding forming a *Sulh* based upon (their agreement to pay the) *Jizyah*, *Imām* Ash-Shāfi'ī said: "And that if any of you mentions Muhammad صلى ا عليه و سلم or the Book of Allāh or His Religion with that which it shouldn't be mentioned with, then the Protection of Allāh, and the protection of the *Amīr Al-Mu'minīn* and all of the Muslims is freed from him, <u>and that which he was given from safety is broken and his money and his blood is permitted for the *Amīr Al-Mu'minīn*, just as the money of the people of war and their blood is permitted."</u> [34]

4. The Security (Amān) of the Messengers:

From Nu'aym Ibn Mas'ūd Al-Ashja'ī who said, "I heard the Messenger of Allāh صلى ا عليه و سلم saying to them – in other words, the two messengers of Musaylamah, the liar – when they read the letter of Musaylamah, ***"What do you two say?"*** They said, "We say as he (i.e. Musaylamah) says." He said, ***"By Allāh, <u>if it were not that the messengers are not killed,</u> I would have struck your necks (i.e. by decapitation)."*** [35]

5. The Security (Amān) of the Muslim in the Land of the Disbelievers:

This consists of a two-way form of security; the security granted to the Muslim by the disbelievers whose country he is entering and the security granted to those disbelievers by the Muslim who is entering that land.

The *Shaykh*, 'Abdul-Qādir Ibn 'Abdul-'Azīz, may Allāh free him, said: "And whoever enters the countries of the *Kuffār* with an *Amān* from them, then it is not allowed for him to betray them regarding their selves and their money due to His, the Most High's, saying: **"And fulfill the covenant (*'Ahd*). Verily, the covenant (*'Ahd*) will be asked about."** [36] Abul-Qāsim Al-Khirqī said, in his abridgment: 'And whoever entered the land of the enemy, and with an *Amān*, then he does not betray them in their money and does not interact with them with *Riba*.' Ibn Qudāmah said in its explanation, 'As for the forbiddance of the *Riba* in *Dār Al-Harb*, then we have mentioned it in the *Riba* while Allāh, the Most High's, statement: **'And He has forbidden the *Riba*...'** and the remaining verses and the narrations, which indicate the forbiddance of the *Riba* are general and include the *Riba* in every place and every time. [37] <u>As for their betrayal, then it is forbidden because they gave him the *Amān* upon the condition that he abandons their betrayal and that he makes them safe from himself</u>, even if it is not mentioned in the phrasing, but it is known in the meaning. And due to that, whoever comes to us from them, with an *Amān* and then betrays us, then he is a nullifier of his covenant (*'Ahd*). So if this is confirmed, then it is not allowed to betray them because it is treachery and treachery is not accepted in our religion. And the Prophet صلى ا عليه و سلم has said: ***"The***

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[34] "*Kitāb Al-Umm*", Vol. 4/280; published by "*Dār Al-Kutub Al-'Ilmiyyah*", Beirut; 1st Edition, 1413 H.

[35] Narrated by Abū Dāwūd and authenticated by Al-Albānī in "*Sahīh Abī Dāwūd* ", #2,398

[36] *Al-Isrā*, 34

[37] This is an apparent refutation of what has been attributed to *Imām* Abū Hanīfah; that he permitted the taking of *Riba* from the disbelievers while in *Dār Al-Harb*, and Allāh knows best.

Muslims are (held) upon their stipulations." [38] Then if he betrays them or steals from them or takes anything from them, then it is obligatory upon him to return that which he took to its owners. Then if its owners come to *Dār Al-Islām* with *Amān* or *Īmān*, then he returns it to them, otherwise he is to send it to them, because he took it from them in a method which was *Harām*. So he must return that which he took just as if he took it from the wealth of a Muslim.' [39] " [40]

A Word About the VISA and the Documentation Papers Which Permit the Muslims to Enter the Land of the Disbelievers

It seems from the general and specific statements of the contemporary scholars who have addressed this topic that the majority of them see the VISA or whatever is like it, to be a covenant (*'Ahd*), which fulfills the conditions for *Amān*. And this is because those who issue it would never have done so if they felt that this Muslim would be a threat to them or their country. And because since the entrance was granted to him and his protection and security is safeguarded within that country, then the understanding from both parties is that they are equally secure from him as well, even if this is not stated as a condition on the terms and conditions of the VISA itself.

For example, *Shaykh* Nāsir Ibn Hamad Al-Fahd, said: "The correct (opinion) is that the documentation is considered a contract of *Amān* according to custom (*'Urf*) and it is a must to fulfill this contract. So whoever enters the countries of the disbelievers, even if they are *Harbīs*, [41] by means of the documentation, then he has given them *Amān*, so it is not allowed for him after that to betray them, whether it is regarding their selves or their wealth. And whoever does that, then he enters under the severe threat of punishment." [42]

And the *Shaykh,* 'Abdul-Qādir Ibn 'Abdul-'Azīz, may Allāh free him, said: "I say: And is the entrance documentation – "the VISA", which the Muslim would receive to enter the countries of the original disbelievers considered an *Amān*? And the answer is: What is apparent is that it is like that, because if a Muslim enters their countries, they give him *Amān* regarding his self and his wealth and if anyone transgresses against him regarding his self and his money, they would show concern and they would judge from him with compensation for the crime and they would return his stolen money, just as they are concerned about the children of their religion. And this indicates that the Muslim is respected (i.e. has rights) in their countries regarding his (physical) self and his money and this is the essence of the contract of *Amān*. So it is obligatory upon him to interact

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[38] Narrated by At-Tirmithī with the phrasing: "...and the Muslims..." and by Abū Dāwūd and Al-Albānī declared it '*Sahīh* ' in "*Sahīh Al-Jāmi'* ", #6,716 and in "*Sahīh At-Tirmithī* " #1,089, and '*Hasan Sahīh* ' in "*Sahīh Abī Dāwūd* ", #3,063, and he said "It is '*Sahīh* ' due to its chains," in "*As-Silsilat As-Sahīhah* ", #2,915

[39] "*Al-Mughnī Wash-Sharh' Al-Kabīr* ", Vol. 10/515-516

[40] "*Al-Jāmi' Fī Talab Al-'Ilm Ash-Sharīf* ", Vol. 2/653

[41] ***Harbīs****:* Those disbelievers without any *Amān* from the Muslims; look to the next section for more details

[42] Look to his *Fatwā*: "*Ash-Shubhah Al-Khatīrah*" And this *Fatwā* was issued by the *Shaykh* demonstrating that what took place on September 11th, 2001 from the group of *Mujāhidīn* who entered the United States of America with VISAs and proceeded with their operation, was an exception to this rule, due to the evidences he mentions therein. So refer to that *Fatwā* for those details.

with them likewise. So he should give them *Amān* regarding their selves and their money. He, the Most High, said: **"So long, as they are true to you, stand you true to them."** [43] And even if he enters their countries with counterfeit documentation, which they assume is valid, then it is obligatory upon him to fulfill that. And Muhammad Ibn Al-Hasan Ash-Shaybānī, may Allāh be merciful to him, gave examples of this, so review them in his book "*As-Siyar Al-Kabīr*. [44] And this ruling is specific to the Muslim entering the countries of the original disbelievers and the place for the details of this topic is the book "*As-Siyar Al-Kabīr*", which was referred to." [45]

The Violation of the *Amān* of the Disbelievers Towards the Muslim While He is in Their Land

However, just as the other categories are conditional upon the validity of that security, likewise this security is also conditional and if it is violated or nullified, the security is broken and the Muslim is not bound by it.

Ash-Shāfi'ī, may Allāh be merciful to him, said: "If the Muslim is taken captive while in the *Dār Al-Harb* as a bound captive or imprisoned or left alone in an area where he sees he is able to escape from elsewhere, and they have not granted him security (*Amān*) nor have they taken security (*Amān*) from him, then it is for him to take whatever he is able to from their children and their women." Ash- Shāfi'ī, may Allāh be merciful to him, said: "So if they or some of them give him security (*Amān*) and enter him into their country with that which is understood by them to be security (*Amān*) from them, while they have power over him, then it is a must upon him that they are safe from him, even if they did not say that, unless they said, 'We have given you security (*Amān*) but there is no security (*Amān*) upon you because we are not seeking security (*Amān*) from you.' So if they say this, (or) something like this, then the saying regarding it is like the saying in the first issue. It is allowed (in that case) for him to assassinate them and to take whatever he can from their property or to destroy it." [46]

Ibn Qudāmah said, "If they release him and give him security (*Amān*), then they have taken security (*Amān*) from him (also) because their security to him results in their being safe from him. Then if it is possible for him to travel to *Dār Al-Islām*, then it is a must for him (to do so). And if he is unable to, then he resides there and his ruling is the (same) ruling as the one who enters *Islām* within *Dār Al-Harb*. Then if he begins to leave and they reach him and pursue him then he is to fight them and the security (*Amān*) is nullified because they have sought from him to stay in *Dār Al-Harb* and this (i.e. his remaining there) is a disobedience. But if they release him and do not give him security (*Amān*) then it is for him to take from them whatever he is able and steal and flee, because he did not give them security (*Amān*) and they did not give him security." [47]

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[43] *At-Tawbah*, 7

[44] Vol. 2/507-508

[45] "*Al-Jāmi' Fī Talab Al-'Ilm Ash-Sharīf* ", Vol. 2/653

[46] "*Kitāb Al-Umm*", Vol. 4/353; published by "*Dār Al-Kutub Al-'Ilmiyyah*", Beirut, 1st Edition, 1413 H.

[47] "*Al-Mughnī* ", Vol. 13/185; published by "*Dār Al-'Ālam Al-Kutub*", Riyādh, 3rd Edition, 1417 H.

And Ahmad Ibn Ibrāhīm Ad-Dumyātī , known as Ibn An-Nahhās, said: "The overpowered prisoner; whenever he is able to flee from the *Kuffār*, then he must do so with no disagreement. And if they free a prisoner unconditionally then it is for him to fight them to death and '*Sabī*' ' (i.e. seize their women and children) and take their wealth. And this is the *Math'hab* of Ahmad. And if they free him upon (the condition) that they are under an *Amān* from him and he is under an *Amān* from them, then it is unlawful (*Harām*) for him to kill them. And likewise, if they free him upon (the condition) that he is under an *Amān* from them – even if they do no seek an *Amān* from him – according to the correct, clearly stated (opinion), and that is the *Math'hab* of Ahmad." [48]

6. The Security (Amān) of the Disbeliever in the Land of the Muslims:

So this security is similar to the fifth category in how it works both ways; firstly by protecting the disbeliever while he has entered into the Muslim land, and secondly by protecting the Muslims from him while is inside their land. And the rules, which govern this security, are similar to that category as well in that his blood and wealth become permitted if he violates his covenant (*'Ahd*), but if he does not violate it, then his blood and wealth are protected for the duration of the terms of that covenant of *Amān*. Therefore if a disbeliever receives *Amān* from a Muslim – whether that Muslim is the proper authority or not – in order to enter *Dār Al-Islām* as a merchant for the purposes of trade or the likes of that, then his security is valid and his blood and wealth are protected.

And from the *Sunnah* is the example of Umm Hānī when she gave her *Amān* to a *Mushrik* during the year of the conquest (*Al-Fat'h*) and then 'Alī, may Allāh be pleased with him, came to kill him, she went the Prophet صلى ا عليه و سلم and informed him of that to which he replied, ***"We have given protection to the one who Umm Hānī has given protection, O Umm Hānī."*** [49]

And there is some discussion from some of the people of knowledge about this in a forthcoming section.

A Word Regarding the Securities Granted to the Disbelievers by the Apostate Rulers

As for those documentation papers and VISAs, which are granted to the disbelievers by the apostate rulers who have allied themselves with the disbelievers or who rule with the fabricated laws of disbelief (*Kufr*), or the likes of this, then these covenants are false (*Bātil*) and nullified and are not to be recognized by the Muslims. And the reason is that the apostate does not represent the Muslims nor can he be considered the proper authority of that land, even if he controls it militarily or by other means.

And about this, the *Shaykh*, 'Abdul-Qādir Ibn 'Abdul-'Azīz, may Allāh free him, said: "But if any of the disbelievers enter the countries of the Muslims, which are states of

[48] "*Mashāri' Al-Ashwāq Ilā Masāri' Al-'Ush'shāq*", Vol. 2/1,053; publication of "*Dār Al-Bashā'ir Al-Islāmiyyah*", Beirut, 2nd Edition, 1417 H.

[49] Agreed upon

disbelief (*Kufr*) and apostasy (*Riddah*) today, then he does not enter it, except after attaining an entry document – "the VISA", from the ruling authorities of these countries, and this is not considered an *Amān* for him, which would protect his blood and his money in these countries, due to this *Amān* being issued by a disbeliever (*Kāfir*) apostate – that being the apostate ruling authority – which does not have any legally legitimate authority over the Muslims. And a covenant (*'Ahd*) from a disbeliever to a disbeliever is not held upon a Muslim. As for a disbeliever entering these countries, based on an invitation from a Muslim, even if he is a transgressor (*Fāsiq*), then this is considered a legally legitimate *Amān* for him, which is obligatory upon the Muslims to respect, due to his صلى ا عليه و سلم saying, ***"The Thimmah of the Muslims is one. So whoever betrays a Muslim, then upon him is the curse of Allāh and the angels and all of the people. No obligatory or superogatory deed shall be accepted from him."***– the *Hadīth*. [50] And the meaning of "...betrays...", in other words: "...breaks his covenant (*'Ahd*)." And the meaning of the *Hadīth*, is that the *Amān* of any Muslim is held upon all of the Muslims, and it is obligatory upon them to respect it. So if a Muslim gives *Amān* to a disbeliever, then it is unlawful (*Harām*) upon the Muslims to do anything to him. [51] And it is known that even in this condition, he does not enter the countries except with documents from the authorities, and this does not affect the aforementioned ruling, due to his صلى ا عليه و سلم saying, ***"Islām is dominant and is not dominated."*** [52] – the *Hadīth*. This, and Allāh, the Most High, knows best." [53]

The '*Muhārib*' / '*Harbī*' vs. the '*Mu'āhad*' / '*Musta'man*'

The differences between those without a covenant (*Amān*) from the Muslims and those with one, is the difference between those whose blood and wealth is permitted and those whose blood is protected, as it has passed. And the one who does have a covenant of *Amān* from the Muslims is the *Mu'āhad* or *Musta'man* whereas the one without any covenant is the *Muhārib* or *Harbī*. And this label (i.e. *Muhārib* or *Harbī*) applies even if this disbeliever is not presently at war with the Muslims, because his label is based on the absence of a covenant, which protects his blood and wealth, and is not conditional upon his hostility towards the Muslims.

Shaykh Nāsir Ibn Hamad Al-Fahd said, "Because the disbeliever generally is upon one of two categories. The first; the '*Muhārib Kāfir*', and this is the basic rule (*Asl*) regarding the *Kāfir*, as the scholars of *Islām* have formed consensus upon it being compulsory (*Fardh*) upon the *Ummah*, during its condition of strength, to wage war against the disbelievers in their own countries, and they merely disagreed about how often (this should be done) from that..." – until he said: "And the second; the '*Thimmī Kāfir*' and the scholars of *Islām* have consensus upon him being (forced to pay) the *Jizyah* and humiliation and the rulings of the people of *Thimmah* are placed upon him." [54]

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[50] Narrated by Al-Bukhārī

[51] Look to "*Fat'h Al-Bārī*", Vol. 4/86

[52] Narrated by Ad-Dāraqutnī and Al-Albānī called it '*Hasan*' in "*Sahīh Al-Jāmi'*", #2,778 and in "*Irwā Al-Ghalīl*", #1,268

[53] "*Al-Jāmi' Fī Talab Al-'Ilm Ash-Sharīf*", Vol. 2/653

[54] From "*At-Tankīl Bimā Fī Bayān Al-Muthaqqafīn Min Al-Abātīl*", Vol. 1/139

And in refuting the concept of 'civilians' vs. 'non-civilians' in terms of whom the *Sharī'ah* permits fighting, the *Shaykh* said, "Even though in the legislation (*Shara'*), there is no 'civilian' or 'non-civilian.' Rather, there is *Muhārib* and *Mu'āhad.* [55] And the *Muhāribūn* from the disbelievers; it is permitted to kill them unrestrictedly, except for the old men and the women and children and infants and the likes of them, according to the exceptions mentioned in the books of *Furū'* (i.e. jurisprudence etc.), such as killing them based upon their proximity to other than them, or when the enemy uses them as human shields or during the night attacks and the like of this. As for the mature, *Kāfir Muhārib* male, then it is permitted to kill him, even if he is customarily called a 'civilian' by those people, just as it is presently the situation in the state of the Jews (i.e. Israel)." [56]

And *Shaykh* 'Abdul-Qādir Ibn 'Abdul-'Azīz, may Allāh free him, said, "The *Muhārib*; in other words, the one who has no covenant (*'Ahd*)…" [57]

And 'Abdul-Qādir 'Awdah, may Allāh be merciful to him, said about the *Muhārib*: "He originally is a member of a state that is in a state of war with the *Islāmic* state. And he is also the one who was protected with an *Amān* or an *'Ahd* and his *Amān* or *'Ahd* has concluded. And from that which is agreed upon is that the *Harbī* is one whose blood is spilled with impunity (*Mahdūr Ad-Damm*). So if an individual kills him or injures him, then he has killed or injured an individual whose killing and injuring is permitted and there is no punishment for a permissible act." Then he said: "As for if he is killed in other than the field of war without any reason like if he is captured in *Dār Al-Islām* or taken prisoner, then the one who captured him or took him prisoner killed him, or someone other than those two killed him, then the killer is not held to be a murderer because the *Harbī* is one whose blood is permitted, so his blood stays permitted after the capturing or the being taken prisoner. The responsibility only comes from the fact that, did he transgress against the general authority to whom those captured or taken prisoner from the *Harbīs* are entrusted to." [58] Meaning, by doing this, did he give the *Imām* his right in being able to decide what to do with this person or not. As for his saying: "He originally is a member of a state that is in a state of war with the *Islāmic* state." This is not totally correct, as *Dār Al-Harb* is a state that does not have an *'Ahd* with the Muslims.

Shaykh 'Abdul-Qādir Ibn 'Abdul-'Azīz, may Allāh free him, said: "And it is the one that between it and *Dār Al-Islām* there is no treaty (*Sulh*) or truce (*Hudnah*), and it is not a condition that a war is actually taking place for the validity of this title. Rather, it is sufficient for there not to exist any *Sulh*, as we mentioned, which means that it is allowed for the Muslims to fight the people of these states at whatever time they want, and due to this it was called *Dār Harb*." [59]

Shaykh 'Abdul-Qādir 'Awdah also said: "And it is not for the *Harbīs*, if they do not have a covenant (*'Ahd*) between them and *Dār Al-Islām*, to enter *Dār Al-Islām*. Then if any of

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55 ***Mu'āhad*:** one who has been given a covenant of security

56 Look to footnote #2 "*At-Tankīl Bimā Fī Bayān Al-Muthaqqafīn Min Al-Abātīl* ", Vol. 2/247

57 "*Al-'Umdah Fī I'dād Al-'Uddah Lil-Jihādi Fī Sabīl-illāhi Ta'āla* " Pg. 328

58 "*At-Tashrī' Al-Jinā'ī* ", Vol. 1/533-534

59 "*Al-Jāmi' Fī Talab Al-'Ilm Ash-Sharīf* " Vol. 2/645

them enters it then his blood and his wealth are permissible. And if the *Harbī* enters *Dār Al-Islām* with permission, or a specific *Amān* or based upon an *'Ahd* then he is a *Musta'man* (secure one). And the *Musta'man* is protected in his blood and his money for a temporary safety. Then if his *Amān* is finished then he returns to being a *Harbī* as he was, whose blood is spilled and money is taken with impunity if he leaves *Dār Al-Islām*. As for if he stays in it willingly, then some see that he becomes a *Harbī*, and some see that he becomes a *Thimmī* by his choice to stay in *Dār Al-Islām* and he becomes protected with a permanent protection." [60]

And what is even clearer than this is what Ibn Al-Qayyim narrated from his teacher when he said, "Our *Shaykh* (i.e. Ibn Taymiyyah) said, "And this is the clear comparative analogy (*Qiyās*) because the blood is permissible without a covenant (*'Ahd*). And the covenant (*'Ahd*) is a contract from the contracts so if one of the two signatories does not fulfill that which he contracted upon, then the contract is either nullified or the other signatory is able to nullify it." [61]

Therefore, the summary regarding the disbelievers is that their blood and wealth is lawful (*Halāl*) unless they enter *Islām* or they are afforded one the categories of the securities mentioned above. And due to this, the '*Muhārib*', is the one whose blood and property is not protected from the Muslims and they are those whom the Muslims are permitted to wage war against. These are from the category which takes the ruling of the basic rule (*Asl*) and adds to this, the characteristic of not belonging to one the groups whom the Muslims have given security to.

Seizing the Wealth or Shedding the Blood of the *Muhārib* Disbelievers While There Is No Hostilities

As for the wealth of the disbelievers, then there are two general ways it can come into the possession of the Muslims. The first is when it is taken as a result of fighting, such as when the Muslims go to war against them and are victorious and seize their wealth and property, women and children etc. as *Ghanīmah* (war booty). And the second is when it is taken without any fighting, such as when it is given voluntarily as a tribute to the Muslims to secure their safety – and this is the *Thimmah* or *Jizyah* – or involuntarily, such as when it is seized by the Muslims when they flee or other than this – and this is *Al-Fay'*.

As-San'ānī said, "The *Fay'* is that which is taken without fighting." [62] And Ibn Kathīr said, "He, the Most High, spoke to clarifying what the *Fay'* is and what its description is and what its ruling is. So the *Fay'* is all wealth, which it taken from the disbelievers without fighting nor expedition with either cavalry or camelry." [63] And 'Abdur-Rahmān As-Sa'dī said, "And the definition of the *Fay'*, according to the terminology of the jurists, is that which is taken from the wealth of the disbelievers rightfully without any fighting,

[60] "*At-Tashrī' Al-Jinā'ī* ", Vol. 1/277-278

[61] "*Ah'kām Ahl Ath-Thimmah*", Vol. 3/1,354

[62] "*Subul As-Salām* ", Vol. 4/124 publication of "*Dār Al-Kitāb Al-'Arabī* ", Beirut, 13th Edition 1422 H.

[63] "*Tafsīr Al-Qur'an Al-"Athīm* ", Vol. 4/429 publication of "*Dār Al-Fayhā'* ", Damascus and "*Dār As-Salām*", Riyādh, 2nd Edition, 1418 H.

such as this wealth (i.e. the wealth of Banī An-Nadhīr), which they fled and abandoned due to fear of the Muslims. And it was called *Fay'*, because it returned from the disbelievers who did not deserve it, to the Muslims, who are the most deserving of it." [64]

And in a lengthy explanation, *Shaykh Al-Islām*, Ibn Taymiyyah said: "As for *Al-Fay'*, then its basic rule (*Asl*) is what Allāh, the Most High, mentioned in *Sūrat Al-Hashr*, which He revealed in the Battle of Banī An-Nadhīr, after Badr, from His, the Most High's statement: **"And what Allāh gave as *Fay'* to His Messenger from them, for which you made no expedition with either cavalry or camelry. But Allāh gives power to His Messengers over whomsoever He wills. And Allāh is Able to do all things. What Allāh gave as *Fay'* to His Messenger from the people of the townships - it is for Allāh, His Messenger, the kindred, the orphans, the poor, and the wayfarer, in order that it may not become a fortune used by the rich among you. And whatsoever the Messenger gives you, take it, and whatsoever he forbids you, abstain (from it), and fear Allāh. Verily, Allāh is Severe in punishment. (And there is also a share in this booty) for the poor emigrants, who were expelled from their homes and their property, seeking bounties from Allāh and to please Him and supporting Allāh and His Messenger. Such are indeed the truthful. And those who, before them, had homes (in *Al-Madinah*) and had adopted the Faith, love those who emigrate to them, and have no jealousy in their breasts for that which they have been given (i.e. from the booty of Banī An-Nadhīr), and give them (emigrants) preference over themselves, even though they were in need of that. And whosoever is saved from his own covetousness, such are they who will be the successful. And those who came after them say: 'Our Lord! Forgive us and our brethren who have preceded us in Faith, and put not in our hearts any hatred against those who have believed. Our Lord! You are indeed full of kindness, Most Merciful."** [65]

"So He, glory be to Him, the Most High, mentioned the *Muhājirīn* and the *Ansār*, and those who came after them upon this description. So included in the third category is everyone who comes in this way until the Day of Judgment, as they were included in His, the Most High's, saying: **'And those who believed afterwards, and emigrated and strove hard along with you, (in the Cause of Allāh) they are of you."** [66] And in His, the Most High's, saying: **'...and also those who followed them exactly (in Faith).'** [67] And in His, the Most High's, saying: **'And He has sent him (Prophet Muhammad صلى ا عليه و سلم) also to others among them (Muslims) who have not yet joined them (but they will come). And He (Allāh) is the All-Mighty, the All-Wise."** [68]

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[64] "*Taysīr Al-Karīm Ar-Rahmān* ", Pg. 788 publication of "*Mu'assasat Ar-Risālah* ", Beruit, 1st Edition, 1420 H.

[65] *Al-Hashr*, 6-10

[66] *Al-Anfāl*, 75

[67] *At-Tawbah*, 100

[68] *Al-Jumu'ah*, 3

"And the meaning of His saying: **"...for which you made no expedition with either cavalry or camelry."** In other words, you did not move, nor led horses nor camels. And due to this, the jurists (*Fuqahā'*) said: The *Fay'* is what is taken from the *Kuffār* without any fighting, because the expedition with horses and camels is the meaning of fighting. And it was called *Fay'*, because Allāh *'Afā'ahu'* on the Muslims. In other words, He returned it to them from the disbelievers. Because the basic rule (*Asl*) is that Allāh, the Most High, only created the money to assist in His worship. So those who disbelieve in Him permitted their selves, with which they did not worship Him, and their wealth, which they did not seek help from to worship Him, is for His believing slaves who do worship him, and He returned to them that which they deserve. Just as returned to the man is that which was wrongfully taken from his inheritance, even if he never had control over it before that. And this is like the *Jizyah* upon the Jews and the Christians, and the money upon which the *Sulh* (treaty) is made with the enemy, or which they made a *Hudnah* with the *Imām* of the Muslims with..." [69]

Here, Ibn Taymiyyah explains that the reason that it is lawful (*Halāl*) is due to the fact Allāh created the money and the souls for His worship, and since those who disbelieve do not use what they have in the way that it was supposed to be used, they lose the right to having these things, and the right goes to the Muslim, even if this originally wasn't his, just as the person whose inheritance is stolen, once it is found, it goes to him, even though he never had it in his possession before.

And what seems to be the strongest opinion regarding those disbelievers who approach the Muslim lands while there is the possibility that they did so for the sake of requesting security so that they could enter, is that they are not attacked because it can not be verified what their intention was. However, if they have entered the land of the Muslims or approached it for other than the purpose of requesting the security (*Amān*), then their blood and wealth is permitted and it is to be distributed amongst the Muslims either by the *Imām* or by themselves. And there is a difference of opinion regarding those who came to the lands of the Muslims assuming that their intention to trade as merchants would be a security for them and Allāh knows best.

Ibn An-Nahhās said: "The author of '*Al-Mughnī* ' said: 'Whoever loses his way or the wind takes him to us (i.e. boat), then he is for whoever takes him, according to one of the two narrations (i.e. from Ahmad) and the other narration is that he would be *Fay'*. [70] And Ahmad was asked about a ship, which was dispatched by the emperor of Rome, which contained men. Then the wind sent it to Tarsūs, so the people of Tarsūs came out then killed the men and took the wealth. So he said, 'This is *Fay'* for the Muslims, which Allāh *'Afā'a'* upon them.' And he was asked about a people who lose their way and then enter a town from the towns of the Muslims and then they seize them? So he said, 'They would be for the people of the town collectively. They would divide them.' [71] And he was asked about a people who are in a fortress or in *Ribāt* (guard duty etc.), then a people from them go out to fight them (i.e. the disbelievers) and they attain livestock and

[69] "*As-Siyāsah Ash-Shar'iyyah Fī Islāh Ar-Rā'ī War-Ra'iyyah*", page 46-47 published by "*Maktabat Al-Muwayyid*", Riyadh and "*Maktabat Al-Bayyān*", Damascus; 2nd Edition, 1413 H.

[70] "*Al-Mughnī* ", Vol. 10/441

[71] "*Al-Mughnī Wash-Sharh' Al-Kabīr* ", Vol. 10/564-565

weapons. So Abū 'Abdillāh said, 'It would be between the people of *Ribāt* and the people of the fortress."

"Issue: The author of '*Al-Mughnī* ' said: 'If a *Harbī* enters into *Dār Al-Islām* without an *Amān*, then it is examined whether he has weapons with him, which he sells in *Dār Al-Islām* and if they customarily enter upon us as merchants without an *Amān*, then they are not to be intercepted. And Ahmad said, 'If the people go out upon the sea, and then a ship, which has merchants from the *Mushrikūn* in it – from the land of the enemy, wanting to go to the countries of *Islām* – then they are not intercepted and they are not fought.' [72] – finished. But Ar-Rāfi'ī and An-Nawawī and others mentioned that the intention of sales is not considered an *Amān* and that if he says, 'I assumed that intending to trade would be considered an *Amān*,' then there is no effect by his assumption and he is to be killed.' [73] – finished. And I asked a group from the Shāfi'īs about a *Harbī* who leaves from his country intending the countries of the Muslims for trade: "Is it allowed for one of the herd to battle him before his entering into the seaport of the Muslims or after they entered, and before their *Amān* or after it?' They replied that it is allowed to attack them before their entering into the seaport of the Muslims and after it, and Allāh knows best.' [74] " [75]

And the point of these examples is to illustrate how the jurists permitted the blood and wealth of the disbelievers – from tradesmen and others – based on the fact that they have not been issued any covenant (*'Ahd*) of *Amān* and not based on their aggression towards *Islām* or the Muslims. And they only disagreed on whether he should be given security based on circumstances where the disbelievers customarily enter *Dār Al-Islām* for the purpose of trade and how the wealth should be distributed when it is seized. And these are jurisprudence-oriented matters, which does not relate to the basic rule (*Asl*).

"Ibn 'Abd As-Salām Al-Mālikī said, in '*Sharh' Al-Mukhtasar*' within the text of "*Al-Madawnah*" upon that which is in '*At-Tah'theeb*', it was said to him, 'A *Harbī* is taken in our country. Would he be for the one who took him, or would he be *Fay'* ? He said, 'Mālik said regarding those who were found on our shore from the enemy, then they say, 'We are merchants,' and the likes of that, then that is not accepted from them and they are not for those who found them. And the *Imām* does that which he sees fit regarding them, and I see that that is *Fay'* for the Muslims and the *Imām* performs deductive reasoning (*Ijtihād*) regarding them.' And if a Roman is taken after he has come to our shore as a merchant, then says, 'I assumed that you would not intercept those who come as merchants for trade,' or if he is taken in the country of the enemy while he is approaching us, then says, 'I came seeking *Amān*,' then this is problematic issue and I see that he should be returned back to his place of safety.'

"Ibn Wahab narrated from Mālik regarding a people from the enemy who comes to our shore without permission, then they are taken and then they claim that they are merchants who have drifted from the sea, and their truthfulness is unknown, and their ship has been damaged and they have weapons, or they complain of severe thirst, then

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[72] "*Al-Mughnī* ", Vol. 10/441

[73] "*Ar-Rawdhah* ", Vol. 10/280

[74] "*Ar-Rawdhah* ", Vol. 10/280

[75] "*Mashāri' Al-Ashwāq Ilā Masāri' Al-'Ush'shāq*", Vol. 2/1,054, publication of "*Dār Al-Bashā'ir Al-Islāmiyyah*", Beirut, 2nd Edition, 1417 H.

they come for water without permission, then that is for the *Imām* to do whatever is in his opinion, and they are not divided into fifths, because the fifth is only for that which is taken by going out upon horses and camels (i.e. as in *Ghanīmah*).' Then Ibn 'Abd As-Salām said after some discussion, 'And if there is no indication for their truthfulness or their lying, then their ruling is either enslavement or that they are returned to their place of safety, and the killing is not allowed upon the most popular of the two sayings. And the other saying is that it is allowed, acting upon the result of the basic rule (*Asl*) and the absence of any preventative factor.' [76]

And Muhmmad Khayr Haykal said, "And despite that, the Muslim has the right to make his sole intention to attain the wealth of the enemy, even if it is through the path of going to them one-by-one and shedding their blood, as long as this Muslim did not enter upon them with *Amān*. And that is because the state of the enemy is a state of fighting and a state of plundering [77] and a state of permissibility by the evidence of the permissibly of fighting them and taking their money as war booty (*Ghanīmah*)." [78]

Ibn Taymiyyah, may Allāh be merciful to him, said: "If a man from them – in other words, the disbelievers – is taken prisoner in the fighting or other than the fighting, like if the ship throws him to us, or he looses his way or he is taken by stratagem then the *Imām* does with him whatever is more beneficial, from killing him or enslaving him or bestowing favour upon him, or ransoming him for money or a life, according to most of the jurists (*Fuqahā'*) as is indicated by the Book and the *Sunnah*." [79]

It has come in "*As-Siyar Al-Kabīr* " by Imām Muhammad Ibn Al-Hasan Ash-Shaybānī, "That a man from Ashja'a came to the Prophet صلى ا عليه و سلم and complained to him about a matter. So he said, ***"Be patient."*** Then he went and took *Ghanīmah* from the enemy and he came with it to the Prophet صلى ا عليه و سلم. So he made it lawful (*Halāl*) for him. So Allāh, the Most High, revealed: **"And whoever fears Allāh, He will find a way out for him and provide for him from what he does not expect…"** [80] *Imām* Ash-Shaybānī said, "This (evidence) is the basis (*Asl*) for our '*Ulamā* regarding that which one or two seize from *Dār Al-Harb*, if they enter for the purpose of stealing without the permission of the *Imām*." [81]

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[76] "*Mashāri'Al-Ashwāq Ilā Masāri'Al-'Ush'shāq*", Vol. 2/1,054-1,055; publication of "*Dār Al-Bashā'ir Al-Islāmiyyah*", Beirut, 2nd Edition, 1417 H.

[77] "*As-Siyar Al-Kabīr Wa Sharh'uhu* " Vol. 1/355 & Vol. 3/915 and "*As-Sayl Al-Jarrār* ", Vol. 4/551

[78] "*Al-Jihād Wal-Qitāl Fī As-Siyāsah Ash-Shar'iyyah* ", Vol. 1/277; publication of "*Dār Al-Bayāraq & Dār Ibn Hazm* ", 2nd Edition, 1417 H.

[79] "*Majmū' Al-Fatāwa* ", Vol. 28/355

[80] *Al-Talaq*, 2-3

[81] "*Sharh' As-Siyar Al-Kabīr* ", Vol. 4/1,260-1,261

The Basic Rule (*Asl*) of the Blood, Wealth and Honour of the Disbelievers According to the Four Schools

And we see when examining the discussions of the four *Imāms* and the students of their schools, that when they permitted killing and seizing the wealth of the disbelievers, they did so clearly based on the absence of any covenant (*'Ahd*) as well as the basic rule (*Asl*) that their blood and wealth were permissible do to their disbelief and not necessarily because of any hostility towards the Muslims.

Hanafīs:

Imām As-Sarkhasī, may Allāh be merciful to him, said: "He said: 'And I asked him – Abū Hanīfah – about a man who takes a man from the people of the enemy prisoner, does he kill him or bring him to the *Imām*?' He said: 'Either of those that he does is good, because in the taking one as prisoner there is nothing which removes the permissibility of his blood, so that the *Imām* can kill him, then like that it is allowed for the one who took him prisoner, just as it was allowed before he took him. And when Umayyah Ibn Khalaf was killed after he was taken prisoner on the Day of Badr, the Messenger of Allāh صلى ا عليه و سلم did not object to that from the person who killed him. And if he brings him to the *Imām*, then it is closer to the honouring of the sanctity of the *Imām*, and the first is closer to openly showing the severity against the *Mushrikīn* and breaking their strength. So he must choose from that what he knows is more beneficial and better for the Muslims." [82]

Mālikīs:

"Ibn 'Abd As-Salām Al-Mālikī said, in '*Sharh' Al-Mukhtasar* ' within the text of '*Al-Madawnah*' upon that which is in '*At-Tah'theeb*', it was asked of him, 'A *Harbī* is taken in our country. Would he be for the one who took him, or would he be *Fay'*? He said, 'Mālik said regarding those who were found on our shore from the enemy, then they say, 'We are merchants,' and the likes of that, then that is not accepted from them and they are not for those who found them. And the *Imām* does that which he sees fit regarding them, and I see that that is *Fay'* for the Muslims and the *Imām* performs deductive reasoning (*Ijtihād*) regarding them.' And if a Roman is taken after he has come to our shore as a merchant, then says, 'I assumed that you would not intercept those who come as merchants for trade,' or if he is taken in the country of the enemy while he is approaching us, then says, 'I came seeking *Amān*,' then this is problematic issue and I see that he should be returned back to his place of safety." [83]

"Ibn Wahab narrated from Mālik regarding a people from the enemy who comes to our shore without permission, then they are taken and then they claim that they are merchants who have drifted from the sea, and their truthfulness is unknown, and their ship has been damaged and they have weapons, or they complain of severe thirst, then they come for water without permission, then that is for the *Imām* to do whatever is in

[82] "*Al-Mabsūt* ", Vol. 10/137-138

[83] "*Mashāri' Al-Ashwāq Ilā Masāri' Al-'Ush'shāq*", Vol. 2/1,054-1,055; publication of "*Dār Al-Bashā'ir Al-Islāmiyyah*", Beirut, 2nd Edition, 1417 H.

his opinion, and they are not divided into fifths, because the fifth is only for that which is taken by going out upon horses and camels.' Then Ibn 'Abd As-Salām said after some discussion, 'And if there is no indication for their truthfulness or their lying, then their ruling is either enslavement or that they are returned to their place of safety, and the killing is not allowed upon the most popular of the two sayings. And the other saying is that it is allowed, acting upon the result of the basic rule (*Asl*) and the absence of any preventative factor." [84]

Shāfi'īs

Imām Ash-Shāfi'ī, may Allāh be merciful to him, said: "If the Muslim is taken captive while in the *Dār Al-Harb* as a bound captive or imprisoned or left alone in an area where he sees he is able to escape from elsewhere, and they have not granted him security (*Amān*) nor have they taken security (*Amān*) from him, then it is for him to take whatever he is able to from their children and their women." Ash- Shāfi'ī, may Allāh be merciful to him, said: "So if they or some of them give him security (*Amān*) and enter him into their country with that which is understood by them to be security (*Amān*) from them, while they have power over him, then it is a must upon him that they are safe from him, even if they did not say that, unless they said, 'We have given you security (*Amān*) but there is no security (*Amān*) upon you because we are not seeking security (*Amān*) from you.' So if they say this, (or) something like this, then the saying regarding it is like the saying in the first issue. It is allowed (in that case) for him to assassinate them and to take whatever he can from their property or to destroy it." [85]

And Ibn An-Nahhās said, "And I asked a group from the Shāfi'īs about a *Harbī* who leaves from his country intending the countries of the Muslims for trade: "Is it allowed for one of the herd to battle him before his entering into the seaport of the Muslims or after they entered, and before their *Amān* or after it?' They replied that it is allowed to attack them before their entering into the seaport of the Muslims and after it, and Allāh knows best." [86]

Hanbalīs:

"The author of '*Al-Mughnī*' said: 'Whoever loses his way or the wind takes him to us (i.e. boat), then he is for whoever takes him, according to one of the two narrations (i.e. from Ahmad) and the other narration is that he would be *Fay'*. [87] And Ahmad was asked about a ship, which was dispatched by the emperor of Rome, which contained men. Then the wind sent it to Tarsūs, so the people of Tarsūs came out then killed the men and took the money. So he said, 'This is *Fay'* for the Muslims, which Allāh *'Afā'a'* upon them.' And he was asked about a people who lose their way and them enter a town from the towns of the Muslims and then they seize them? So he said, 'They would be for the people of the

[84] "*Mashāri' Al-Ashwāq Ilā Masāri' Al-'Ush'shāq*", Vol. 2/1,054-1,055; publication of "*Dār Al-Bashā'ir Al-Islāmiyyah*", Beirut, 2nd Edition, 1417 H.

[85] "*Kitāb Al-Umm*", Vol. 4/353; published by "*Dār Al-Kutub Al-'Ilmiyyah*", Beirut; 1st Edition, 1413 H.

[86] "*Mashāri' Al-Ashwāq Ilā Masāri' Al-'Ush'shāq*", Vol. 2/1,053; publication of "*Dār Al-Bashā'ir Al-Islāmiyyah*", Beirut, 2nd Edition, 1417 H.

[87] "*Al-Mughnī* ", Vol. 10/441

town collectively. They would divide them.' [88] And he was asked about a people who are in a fortress or in *Ribāt*, then a people from them go out to fight them (i.e. the disbelievers) and they attain livestock and weapons. So Abū 'Abdillāh (i.e. *Imām* Ahmad) said, 'It would be between the people of *Ribāt* and the people of the fortress."

Ahmad Ibn Ibrāhīm Ad-Dumyātī , known as Ibn An-Nahhās, said: "The overpowered prisoner; whenever he is able to flee from the *Kuffār*, then he must do so with no disagreement. And if they free a prisoner unconditionally then it is for him to fight them to death and "*Sabī* " (i.e. seize their women and children) and take their wealth. And this is the *Math'hab* of Ahmad. And if they free him upon (the condition) that they are under an *Amān* from him and he is under an *Amān* from them, then it is *Harām* for him to kill them. And likewise, if they free him upon (the condition) that he is under an *Amān* from them – even if they do no seek an *Amān* from him – according to the correct, clearly stated (opinion), and that is the *Math'hab* of Ahmad." [89]

The Story of Abū Basīr, may Allāh be pleased with him

And in this story, as it has been narrated by Al-Bukhārī and others, Abū Basīr was from the Muslim converts in Makkah. After the Treaty of Hudaybiyah, which contained a stipulation that if any Muslims flee Makkah to join the Prophet صلى ا عليه و سلم in Al-Madīnah, they would be sent back to Makkah, Abū Basīr, may Allāh be pleased with him, came to the Prophet صلى ا عليه و سلم being pursued by two *Mushriks* from Quraysh. So when they met up with the Messenger of Allāh صلى ا عليه و سلم , they (i.e. the *Muhriks*) said to him:

"(Abide by) the *'Ahd* you gave us.' So, he handed him over to the two men. Then they took him out (of the City) till they reached Thū Al-Hulayfah where they dismounted and ate some dates they had with them. Abū Basīr said to one of them, 'By Allāh, O so-and-so, I see you have a fine sword.' The other drew it out (of the scabbard) and said, 'By Allāh, it is very fine and I have used it many times.' Abū Basīr said, 'Allow me to look at it.' So he gave it to him, then he struck him with it till he died, and his companion ran away till he came to Al-Madīnah and entered the *Masjid* running. When the Messenger of Allāh صلى ا عليه و سلم saw him he said, ***'This man has seen something terrifying.'*** When he reached the Prophet صلى ا عليه و سلم he said, 'By Allāh, my companion has been murdered and verily I will be murdered.' Then Abū Basīr came and said, 'O Prophet of Allāh, Allāh has fulfilled your obligations as you returned me to them (i.e. the disbelievers), then Allāh saved me from them.' The Prophet صلى ا عليه و سلم said, ***'Woe to his mother! (What an excellent) war kindler he would be, if only he had anyone for him.'*** So when he heard that he knew that he would return him to them, so he set off till he reached the seashore.' He said: 'Abū Jandal Ibn Suhayl got himself released from them (i.e. the disbelievers) and joined Abū Basīr. So no man from Quraysh who embraced *Islām* would go out except that he would join Abū Basīr until they formed a strong group. By Allāh, they would not hear about a caravan of Quraysh heading

[88] "*Al-Mughnī Wash-Sharh' Al-Kabīr* ", Vol. 10/564-565

[89] "*Mashāri' Al-Ashwāq Ilā Masāri' Al-'Ush'shāq*", Vol. 2/1,053; publication of "*Dār Al-Bashā'ir Al-Islāmiyyah*", Beirut, 2nd Edition, 1417 H.

towards Ash-Shām, except that they intercepted it and killed them (i.e. the disbelievers) and took their properties.” [90]

Extracting the Benefits From the Story of Abū Basīr, may Allāh be pleased with him

So in this story, the Prophet صلى ا عليه و سلم and the Muslims in Al-Madīnah were under a peace treaty (*Hudnah*), which is a covenant (*‘Ahd*) of *Amān* as it has previously been explained. However, the Muslims of Makkah were not included in this covenant (*‘Ahd*) and were not bound by its terms and stipulations. And so when it became clear to Abū Basīr, may Allāh be pleased with him, that he was not included in this covenant (*‘Ahd*), he said, as it has been narrated in Al-Bukhārī’s phrasing: “O Prophet of Allāh, Allāh has fulfilled <u>your</u> obligations...” showing that he was not bound by this covenant (*‘Ahd*) nor was he blameworthy for slaying one of his two captors and pursuing the other.

Ibn Hajar said in his explanation of the phrase: “O Prophet of Allāh, Allāh has fulfilled your obligations...’ In other words, ‘So there is nothing upon you from them as a penalty in what I did.’ Al-Awzā’ī added from Az-Zuhrī, ‘So Abū Basīr said, ‘O Messenger of Allāh, you know that if I go to them, they will put me into *Fitnah* with respect to my religion. So I did what I did and there is no covenant (*‘Ahd*) between me them, nor any contract (*‘Aqd*).’ And in it, there is (proof) that it is for the Muslim who comes from *Dār Al-Harb* in the time of a peace treaty (*Hudnah*) to kill those who seek to return him if he stipulates that to them.” [91]

Furthermore, what is apparent in the *Hadīth* is that this was not only acceptable, because Abū Basīr was not bound by the covenant (*‘Ahd*) of the Prophet صلى ا عليه و سلم and the Muslims of Madīnah, we see that this course of action was even hinted at, as Ibn Hajar mentioned: “And in the narration of Abī Al-Mulayh the additional phrasing: ‘So ‘Umar said to him (i.e. Abū Basīr), ‘You are a man and he is a man and you have a sword.’ And this is clearer than a hint towards killing him.” [92] And this hinting was more than evident in the statement of the Messenger of Allāh صلى ا عليه و سلم when he said: ***“Woe to his mother! (What an excellent) war kindler he would be, if only he had anyone for him.”***

In his explanation of this phrase, Ibn Hajar said, ***“...if only he had anyone for him,”*** in other words, to support him and assist him and help him. And in the narration of Al-Awzā’ī: ‘So Abū Basīr deduced it (i.e. figured out the hint) and then fled.’ And in it, there is the suggestion for him (i.e. Abū Basīr) not to return to the *Mushrikīn*. And he (i.e. the Prophet صلى ا عليه و سلم) signaled to those who were reached by this (news), from the Muslims, to follow him. The majority of the scholars from the Shāfi’īs and other than

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[90] Narrated by Al-Bukhārī on the authority of Al-Miswar Ibn Makhramah and Marwān Ibn Al-Hakam; *Hadīth* #2,529

[91] “*Fat’h Al-Bārī* ”, Vol. 5/429; publication of “*Maktabat Dār As-Salām*” & “*Maktabat Dār Al-Fayhā’* ”, 1st Edition, 1418 H.

[92] “*Fat’h Al-Bārī* ”, Vol. 5/429; publication of “*Maktabat Dār As-Salām*” & “*Maktabat Dār Al-Fayhā’* ”, 1st Edition, 1418 H.

them said that it is allowed to hint that, but not clearly state it, as it is in this story. And Allāh knows best." [93]

Therefore, Abu Basīr's subsequent withdrawal from Quraysh and attacking of their caravans, seizing their wealth, and killing the men of their convoys, illustrates the ruling in the previous sections. And it can not be claimed that this was only permissible because of the hostility of Quraysh towards Abū Basīr, because when Abū Basīr left the precincts of Makkah and took up residence near the seashore, he was no longer under any threat from them. Yet he still shed the blood of the men of their convoys and seized their wealth. And it is clear that the caravans were no threat to Abū Basīr, as they were deploying for trade, nor is there any indication that those whose wealth he seized or blood he shed were aggressive towards the Muslims in Makkah. What is clear from the *Hadīth* itself, as well as the commentary of Ibn Hajar and others, is that this blood and wealth was permissible to Abū Basīr due to the fact that these *Mushrikīn* had no covenant (*'Ahd*) of *Amān* from him. And this is that the basic rule (*Asl*) regarding the blood, wealth and honour of the disbelievers, is it is lawful (*Halāl*), as long as they do not have a covenant (*'Ahd*) of *Amān*, which would protect them. And the fact that the remaining Muslim *Sahābah* fled Makkah to join Abū Basīr in these activities shows that they approved of his understanding of this ruling, as it has come in the ending of this narration:

"So no man from Quraysh who embraced *Islām* would go out except that he would join Abū Basīr until they formed a strong group. By Allāh, they would not hear about a caravan of Quraysh heading towards Ash-Shām, except that they intercepted it and <u>killed them (i.e. the disbelievers) and took their properties</u>."

And the author of '*Al-Mughnī* ' said, commenting upon the story of Abū Basīr: "<u>Therefore based upon this point, it is allowed for the ones who enter into *Islām* from the disbelievers, to withdraw to an area and kill those who they are able to from the *Kuffār* and to take their wealth</u>. And they are not entered into the treaty (*Sulh*). And if the *Imām* adds them to him, with the permission of the disbelievers, then they enter into the treaty (*Sulh*) and (at that point) killing of the disbelievers and taking their wealth becomes unlawful (*Harām*)." [94]

And Ibn Al-Qayyim said, while extracting the benefits from the story of Abū Basīr: "And from them (i.e. the benefits), is that if those with whom there is a covenant (*'Ahd*), receive him and take control over him,<u> then he kills one of them, then there is no blood-wit (*Diyah*) upon him, nor any retribution execution (*Qisās*) and the *Imām* does not take anything from him</u>. Rather, his ruling would be like the ruling of his killing them in their state, as there is no ruling for the *Imām* in there, as Abū Basīr killed one of the two men who had a covenant (*'Ahd*) at Thū Al-Hulayfah and it falls under the ruling of Al-Madīnah, but they had taken control over him while he was out from under the hand of the *Imām* and his ruling." [95]

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93 "*Fat'h Al-Bārī* ", Vol. 5/428; publication of "*Maktabat Dār As-Salām*" & "*Maktabat Dār Al-Fayhā'* ", 1st Edition, 1418 H.

94 "*Al-Mughnī* ", Vol. 10/525

95 "*Zād Al-Ma'ād* ", Vol. 3/308-309

Refutation of the Misconceptions Regarding the Basic Rule (*Asl*) of the Blood, Wealth and Honour of the Disbelievers

As for those misconceptions or doubts (*Shubuhāt*) which some people have been confused by, then some of them are misunderstandings due to the generalities of certain texts, whereas others are due to the deliberate plots of the "modernists", "moderates" and apologists whose goal it is to reinvent the *Sharī'ah* of *Islām* by stripping it from its principles of disavowal (*Barā'ah*) and enmity towards the disbelievers and its clearness concerning the inequality between them and the believers. And whether they call this "extremism" or "radicalism", the fact remains that the rulings of *Islām* are found in its texts and not in the slogans of the people who weakly adhere to its principles. [96] And this common trend is found in most of their defeated concepts; whether it applies to fighting or to justice or to politics. And we seek refuge in Allāh from the plots of His enemies.

1. Reversing the Basic Rule (Asl)

Some of the opposition state that the basic rule (*Asl*) regarding the blood, wealth and honour of the disbelievers is that it is unlawful (*Harām*) unless there is a specific evidence, which would permit it. So they reverse the correct ruling and hold the permissibility of shedding the blood of the disbelievers as the exception instead of the basic rule (*Asl*) and by doing so they make the sanctity of disbelievers' blood equal to the blood of the Muslim. For this, they use the verse:

وَلا تَقْتُلُواْ النفْسَ الَتِي حَرمَ اللّهُ إِلا بِالْحَق

"And kill not the soul whom Allâh has forbidden, except for a just cause…" [97]

So some use this verse to prove that the blood is unlawful (*Harām*) generally as a rule, while the specific exception to that would be when there is an evidence to show that it has become lawful (*Halāl*); **"…except for a just cause…"**

And the refutation of this comes from different points. Firstly, the evidence from the *Sharī'ah* (as pointed out earlier) indicates that the blood is lawful prior to the entrance into *Islām*, or while there is no covenant of *Amān* to protect them. And the evidence for that is specific whereas this verse is general. So the generality of this verse does not abrogate or nullify the ruling of permissibility as indicated by specific evidences. Secondly, the verse does not indicate any criteria for what would qualify **"…a just cause…"** which makes the killing lawful (*Halāl*) and this adds to its generality. Thirdly,

[96] And for those who label the writers of this essay as extreme then let them look to what the *Imām* of the jurists, *Imām* Ash-Shawkānī said when he clearly stated: "It is allowed for the Muslim who enters into *Dār Al-Harb* with an *Amān* from its people to take whatever he is able to from their wealth and to shed whatever he is able to from their blood." And he said refuting the other saying, "I say: There is no necessary tie between the two *Amāns*; not in the *Shara'* nor in the intellect nor by custom." – "*As-Sayl Al-Jarrār* ", Vol. 4/552 And although we do not agree with this opinion of *Imām* Ash-Shawkānī and we maintain that the evidence of the *Sharī'ah* indicates that the *Amān* given to the Muslim by the disbelievers necessitates their security from him as well, this example suffices to show that we have not taken an extreme opinion with respect to these issues at all. And if our position in this matter is "extreme" and "radical" when what would they say about this *Imām* of the jurists, Ash-Shawkānī?

[97] *Al-An'am*, 151

the interpretations of the people of *Tafsīr* have explained the ruling of impermissibility of killing – as it relates to this verse – as applying to the believers and to those disbelievers who have a covenant of *Amān* (i.e. *Mu'āhadīn*) and they have indicated some of the just causes, which have specific evidences from the *Qur'ān* and *Sunnah*.

For example, Ibn Kathīr, may Allāh be merciful to him, said: **"And kill not the soul whom Allâh has forbidden, except for a just cause...'** And this is from that which He, Blessed be Him, the Most High, clearly stated the forbiddance by means of reaffirmation, otherwise it is included in the forbiddance of the *Fawāhish* (i.e. all kinds of elicit evil actions), that which is open from it and that which is hidden, as it has come in the two *Sahīhs* from Ibn Mas'ūd, may Allāh, the Most High, be pleased with him, that he said: 'The Messenger of Allāh **صلى ا عليه و سلم** said, ***'The blood of a Muslim individual who bears witness that there is nothing worthy of worship except Allāh and that I am the Messenger of Allāh is not permitted except in one of three; the fornicator who has been married, and the soul for the soul and the abandoner of his religion; the one who leaves the Jamā'ah (i.e. the general body of the Muslims).'*** And in the phrasing of Muslim: ***'By the One who there is no one worthy of worship other than Him, the blood of a Muslim man..."*** – and he mentioned it (similarly). Al-A'mash said: 'I narrated it to Ibrāhīm, then he narrated to me from Al-Aswad from 'Ā'ishah likewise.' And Abū Dāwūd and An-Nasā'ī narrated from 'Ā'ishah, may Allāh be pleased with her, that the Messenger of Allāh **صلى ا عليه و سلم** said: ***'The blood of a Muslim individual is not permitted except in one of three branches; a 'protected' (i.e. married) fornicator, who is stoned and a man who intentionally murdered, then he is to be killed, and a man who leaves Islām and wages war against Allāh and His Messenger, then he is to be killed or crucified or expelled from the land.'*** And this is the phrasing of An-Nasā'ī. And from *Amīr Al-Mu'minīn*, 'Uthmān Ibn 'Affān, that he said while surrounded (by his would-be killers): 'I heard the Messenger of Allāh **صلى ا عليه و سلم** saying, ***'The blood of a Muslim individual is not permitted except in one of three; a man who disbelieves after his Islām, or commits fornication after 'protection' (i.e. marriage) or killed a soul for other than a soul.'*** So by Allāh, I did not commit fornication in *Jahiliyyah*, nor in *Islām* nor did I wish for any religion other than it, after Allāh guided me, nor did I kill a soul. So for what are you killing me?' – Narrated by the *Imām*, Ahmad and At-Tirmithī and An-Nasā'ī and Ibn Mājah. And At-Tirmithī said, 'This *Hadīth* is *Hasan*.' And the forbiddance and the deterrence and the threat has come regarding the killing of the *Mu'āhad*, and he is the *Musta'man* (i.e. one who has been given an *Amān*) from the people of war, as Al-Bukhārī narrated from 'Abdullāh Ibn 'Umar from the Prophet **صلى ا عليه و سلم**, *Marfū'* (i.e. elevated in the chain of narration): ***'Whoever kills a Mu'āhad, then he shall not smell the fragrance of Jannah, and verily, it is found from the travel distance of forty years.'*** And from Abī Hurayrah, from the Prophet **صلى ا عليه و سلم** that he said: '***Whoever kills a Mu'āhad who has the protection of Allāh and the protection of His Messenger, then he has broken the Thimmah of Allāh. So he shall not smell the fragrance of Jannah, and verily its fragrance is found from the travel distance of seventy years.'*** – Narrated by Ibn Mājah and At-Tirmithī, who said, '*Hasan Sahīh*.' [98]

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[98] "*Tafsīr Al-Qur'ān Al-"Athīm* ", Vol. 2/253-254 publication of "*Dār Al-Fayhā'* ", Damascus and "*Dār As-Salām*", Riyādh, 2nd Edition, 1418 H.

So look to how Ibn Kathīr explained the ruling and restricted the impermissibility to the Muslim and to those who have a covenant of *Amān*, which makes their blood unlawful. And look to how he, my Allāh be merciful to him, used specific evidences for the permissibility of killing Muslims (i.e. fornication, apostasy, murder) whereas he mentioned no specific restriction upon the disbelievers, other than those who are *Mu'āhadīn*.

And the words of Al-Qurtubī, may Allāh be merciful to him, are even more clear, when he said: "The أ (*Alif*) and the ل (Lām) in **النفْسَ** (**"...the soul..."**), defines the category, such as their saying, 'The people were destroyed by the love of the *Dirham* and *Dīnār*,' and likewise is: **'Verily, the man was created very impatient.'** [99] Do you not see his, Glory be to Him, saying: **'Except those devoted (*Al-Musallīn*) to *Salât* (prayers).'** [100] And likewise is His saying: **'By the time, verily the man is in great loss...'** [101] because He said: **'Except those who believed.'** [102] And this verse forbade the killing of the forbidden soul; the believing one or the *Mu'āhad* one, except in the right which obligates its killing. The Messenger of Allāh صلى ا عليه و سلم said: ***'I was ordered to fight the people until they say 'Lā ilāha ill-Allāh', so whoever says, 'Lā ilāha ill-Allāh', then his blood and his self is forbidden except in its right and their reckoning is with Allāh.'*** And this 'right' is many kinds. From it is the withholding of the *Zakāt* and abandoning the prayer, and the *Siddīq* (i.e. Abū Bakr, may Allāh be pleased with him) fought those who withheld the *Zakāt* and in the revelation: **'...then if they repent and establish the prayer and pay the *Zakāt* then open their path..."** [103] And this is clear. And he صلى ا عليه و سلم said, ***'The blood of a Muslim is not permitted except in one of three; the fornicator who has been married, and the soul for the soul and the abandoner of his religion; the one who leaves the Jamā'ah.'*** And he, may peace be upon him, said: ***'If two Khalīfahs are given Bay'ah*** **(oath of allegiance)** ***to; then kill the later of the two.'*** – Narrated by Muslim. And Abū Dāwūd narrated from Ibn 'Abbās, who said, 'The Messenger of Allāh صلى ا عليه و سلم said, ***'Whoever you find performing the action of the people of Lūt, then kill the performer and the one who it is being performed to.'*** And the clarification shall come in *Al-'Arāf* (regarding that). And in the revelation: **'Verily, the recompense of those who wage war against Allāh and His Messenger and create mischief in the Earth, then he is killed.'** – the verse. [104] And He said: **'And if two groups of the believers fight...'** – the verse. [105] And likewise is the one who divides the rank of the Muslims and opposes the *Imām* of their *Jamā'ah* (community) and divides their word and makes mischief in the Earth by

[99] *Al-Ma'ārij*, 19

[100] *Al-Ma'ārij*, 21

[101] *Al-'Asr*, 1-2

[102] *Al-'Asr*, 3

[103] *At-Tawbah*, 5

[104] *Al-Mā'idah*, 33

[105] *Al-Hujurāt*, 9

pillaging the people and the money and transgressing against the *Sultān* (proper authority) and refusing his rule is to be killed. Therefore, this is the meaning of His saying: **'...except for a just cause...'** and He, may peace be upon him, said: ***'The believers blood is equal and their protection includes the least of them (in numbers and status). A Muslim is not killed due to a disbeliever nor one who has a covenant ('Ahd) during his covenant, and the people of two religions do not inherit (from one another).'*** And Abū Dāwūd and An-Nasā'ī narrated from Abī Bakrah, that he said: 'I heard the Messenger of Allāh صلى ا عليه و سلم saying, ***'Whoever kills a Mu'āhad, in other than his time (when it is allowed to kill him) then Allāh forbids the Jannah upon him.'*** And in another narration from Abī Dāwūd that he said, ***'Whoever kills a man from the people of Thimmah, he shall not find the fragrance of Jannah. And verily, its fragrance is found from the travel distance of seventy years.'*** In Al-Bukhārī in this *Hadīth*: ***'...and verily, its fragrance is found from the travel distance of forty years.'*** He narrated it from the *Hadīth* of 'Abdullāh Ibn Al-'Amr Ibn Al-'Ās. [106]

So look to the explanation of Al-Qurtubī and how he emphasised that the phrasing was general to the human race (i.e. the soul) in the beginning and then how he only held the prohibition upon the Muslim and the disbeliever who has a covenant of *Amān* (i.e. *Mu'āhad*). And this was made clear when he said, "And this verse forbade the killing of the forbidden soul; the believing one or the *Mu'āhad* one, except in the right which obligates its killing." And look to how he, may Allāh be merciful to him, used specific examples – just as Ibn Kathīr did – of when it is permissible to kill the Muslim, such as withholding the *Zakāt*, and abandoning the prayer, the married fornicator, the murderer, the apostate, the homosexual and the second *Khalīfah* whereas he only held this prohibition – as it relates to the killing of the disbelievers – upon the *Mu'āhad*. And this is consistent with the basic rule (*Asl*) of the blood of the disbelievers as we have pointed out throughout this essay.

And lastly, At-Tabarī, may Allāh be merciful to him, said: "The saying regarding the interpretation of His, the Most High's, statement: **'And kill not anyone whom Allâh has forbidden, except for a just cause. That is what He advised you with in hopes that you will comprehend.'** He, may His remembrance be High, says: **'Say: Come so that I will recite upon you that which your Lord forbade upon you, that you should not associate anything with him.' – "And kill not anyone whom Allâh has forbidden..."** meaning the soul which Allāh forbade its killing; the believing or the *Mu'āhad* soul. And His saying: **'...except for a just cause...'** meaning, in that which its killing is permitted. From them (i.e. the just causes) is murdering a soul; so he (i.e. the murderer) is to be killed out of retributional killing (*Qisās*), or if he commits fornication while he has been 'protected' (i.e. married); so he is to be stoned, or that he apostates from his true religion; so he is executed. So that is the 'just cause' which Allāh, may His praise be magnificent, permitted the killing of a soul which He forbade its killing upon the believers." [107]

So look to how At-Tabarī, may Allāh be merciful to him, explained it the same as both Ibn Kathīr and Al-Qurtubī and restricted the prohibition to the believer and the disbeliever who has a covenant (*'Ahd*) of *Amān*. And that came in his saying, "...meaning

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[106] "*Tafsīr Al-Qurtubī* ", Vol. 7/118-120, publication of "*Dār Al-Kitāb Al-'Arabī* ", Beirut, 1st Edition, 1418 H.

[107] "*Tafsīr At-Tabarī* "

the soul which Allāh forbade its killing; the believing or the *Mu'āhad* soul." And look to how he held the phrase "**...just cause...**" as those cases where a Muslim's blood has been permitted due to a specific evidence, while being silent regarding the blood of the disbelievers, except in mentioning the prohibition of those who are *Mu'āhad*.

And 'Abdur-Rahmān As-Sa'dī, may Allāh be merciful to him, made it clear when he said: "**And kill not anyone whom Allâh has forbidden, except for a just cause.'** It is the Muslim soul, from male and female and young and old and righteous and wicked, and the disbelieving one which is protected with the covenant (*'Ahd*) and the promise (of safety)." [108]

And all of what has come in the explanation of this verse, by the elite scholars of *Tafsīr*, is consistent with what has been presented in this essay, which indicates the permissibility of the blood, wealth and honour of the disbelievers – and this is the basic rule (*Asl*) – while showing the prohibition of the blood, wealth and honour of the disbelievers when they are under a covenant of *Amān* – and this is the exception to the basic rule.

And finally, the refutation of this misconception lays in the fact that the reversal of this rule seeks to make the blood, wealth and honour of the disbelievers at the same level of sanctity as that of the Muslims. This is because, if we say that the basic rule of the blood, wealth and honour of the Muslim is that is it unlawful (*Harām*), except with specific evidences – which the opposition would surely agree to – then holding this rule similarly upon the disbelievers makes them equal with respect to the ruling upon their blood and wealth. And this is a dangerous misconception, which is clearly refuted by evidences of the *Sharī'ah*.

Allāh, the Most High, said:

أَفَمَن كَانَ مُؤْمِنًا كَمَن كَانَ فَاسِقًا لَا يَسْتَوُونَ

"Is then he who is a believer like he who is Fâsiq (disbeliever and disobedient to Allâh)? Not equal are they." [109]

And He, the Most High, said:

وَمَا يَسْتَوِي الْأَعْمَى وَالْبَصِيرُ وَالَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَلَا الْمُسِيءُ قَلِيلًا مَا تَتَذَكَّرُونَ

"And not equal are the blind and those who see, nor are (equal) those who believe, and do righteous good deeds, and those who do evil (i.e. disbelievers). Little do you remember!" [110]

And the Messenger of Allāh صلى ا عليه و سلم said: "***A Muslim is not killed due to a disbeliever*,"** [111] which indicates the sanctity of the blood of a Muslim over his

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[108] "*Taysīr Al-Karīm Ar-Rahmān* ", Pg. 242 publication of "*Mu'assasat Ar-Risālah* ", Beruit, 1st Edition, 1420 H.

[109] *As-Sajdah*, 18

[110] *Ghāfir*, 58

[111] Narrated by Al-Bukhārī

disbelieving counterpart and the inequality between the two. And this sufficient for a refutation of the first misconception or doubt (*Shubhah*).

2. *Comparisons Between the Condemnation of the Jews and Those Muslims Who Apply the Basic Rule (Asl)*

Allāh, the Most High, said:

وَمِنْ أَهْلِ الْكِتَابِ مَنْ إِن تَأْمَنْهُ بِقِنطَارٍ يُؤَدِّهِ إِلَيْكَ وَمِنْهُم مَنْ إِن تَأْمَنْهُ بِدِينَارٍ لا يُؤَدِّهِ إِلَيْكَ إِلا مَا دُمْتَ عَلَيْهِ قَآئِمًا ذَلِكَ بِأَنَّهُمْ قَالُوا لَيْسَ عَلَيْنَا فِي الأُمِّيِّينَ سَبِيلٌ وَيَقُولُونَ عَلَى اللّهِ الْكَذِبَ وَهُمْ يَعْلَمُونَ

"Among the people of the Scripture (Jews and Christians) is he who, if entrusted with a Cantar (a great amount of wealth, etc.), will readily pay it back; And among them there is he who, if entrusted with a single silver coin, will not repay it unless you constantly stand demanding, that is because they say: 'There is nothing on us regarding the illiterates (Arabs).' But they tell a lie against Allâh while they know it." [112]

So those who use this verse as evidence, say that the condemnation from Allāh towards the Jews who permitted for themselves the wealth of any non-Jew, is an evidence against the Muslim who permits the wealth of the non-Muslims, and they make a comparison between that group and the group of the believers. And the refutation of this misconception comes from two points:

Firstly, the Jews being referred to in this verse were entrusted with money. What this means is that an Arab would entrust a Jew with his money, for business or loans etc. with the agreement that he would be repaid. And this is clear from the verse itself: **"…if entrusted with a single silver coin…"** Therefore, this Jew gave that Arab a covenant (*'Ahd*) and a promise to return it and then betrayed him. And what makes this clear is the verse, which follows this one:

بَلَى مَنْ أَوْفَى بِعَهْدِهِ وَاتَّقَى فَإِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ

"Of course, whoever fulfils his covenant (*'Ahd*) and fears Allâh much; verily, then Allâh loves those who are *Al-Muttaqīn*." [113]

And here Allāh contrasts the evil deed of breaking the covenant – as the Jews had done – with those who fulfill the covenant – as others from the People of the Book had done. Therefore, the first thing, which is being condemned in this verse is the breaking of the covenant (*'Ahd*) and it is a betrayal, as there can be no betrayal when there has been no covenant in the first place.

'Abdur-Rahmān As-Sa'dī said: "He, the Most High, informs (us) about the People of the Book, that from them are a group that is trustworthy so that if you entrust them with *Qanātīr* from money – that being a large amount of money – they will return it to you. And from them are a betraying group who will betray you with the smallest of the small

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[112] *Āl Imrān*, 75

[113] *Āl Imrān*, 76

(amounts) and despite this reprehensible betrayal, they interpret it with the false excuses. So they say, 'There is nothing on us regarding the illiterates,' in other words, there is no blame upon us if we betray them and permit their wealth because they can not have any sanctity." **114**

So this claim of the Jews was that the covenant was not valid anyway because the Arabs could not have sanctity, even after being entrusted and taking a covenant (*'Ahd*) to repay their money.

Secondly, the Jews did so while claiming that this was permissible and textually stated in their book. And this was refuted by Allāh, the Most High, when He said: **"But they tell a lie against Allâh while they know it."**

Ibn Kathīr said, "And His saying: **'...that is because they say: 'There is nothing on us regarding the illiterates,'** in other words, that which held them upon the rejection of the truth was only that they say, 'There is no sin upon us in our religion regarding the consuming the wealth of the illiterate ones, and they are the Arabs, because Allāh has permitted it for us.' Allāh, the Most High, said: **'But they tell a lie against Allâh while they know it.'** In other words, they have fabricated this saying and turned from good to bad with this misguidance, as Allāh has forbidden upon them the consuming of the wealth, except in its right. Rather, they are only a lying people. 'Abdur-Razzāq said, 'Mu'ammar informed us from Abī Is'hāq Al-Hamdānī from Abī Sa'sa'ah Ibn Yazīd that a man asked Ibn 'Abbās saying: 'During battle we take from the wealth of the people of *Thimmah*; chickens and sheep.' Ibn 'Abbās said, 'Then you say what?' He said, 'We say: 'There is no harm upon us regarding that.' He said, 'This is like what the people of the book said: **'There is nothing on us regarding the illiterates.'** Verily, if they pay the *Jizyah* then their wealth is not permitted for you except from good nature (i.e. gifts etc).' And likewise it was narrated by Ath-Thawrī from Abī Is'hāq similarly.' And Ibn Abī Hātim said, "Muhammad Ibn Yahya narrated to us that Abū Ar-Rabi' Az-Zahrānī narrated to us that Ya'qūb narrated to us that Ja'far narrated to us from Sa'īd Ibn Jūbayr, that he said, 'When the people of the book said: **'There is nothing on us regarding the illiterates,'** the Prophet of Allāh **صلى ا عليه و سلم** said: 'The enemies of Allāh have lied. There is nothing that was in *Jāhiliyyah* except that it is beneath these two feet of mine except for the *Amānah* (entrustment) as it is returned to the righteous one and the wicked one." **115**

So look to the explanation of Ibn Kathīr, may Allāh be merciful to him, as he said: "In other words, they have fabricated this saying and turned from good to bad with this misguidance, as Allāh has forbidden upon them the consuming of the wealth, except in its right." So it is clear that this violation of their covenant was not permitted for them in their book as they claimed. And what makes this clearer is the circumstances in which Ibn 'Abbās, may Allāh be pleased with him, held this verse upon the Muslims and made his comparison with the Jews to those Muslims who informed him that they had taken from the wealth of those people who had paid them the *Jizyah*. As they said: "During battle we take from the wealth of the people of *Thimmah*; chickens and sheep.' And his

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114 "*Taysīr Al-Karīm Ar-Rahmān* ", Pg. 109 publication of "*Mu'assasat Ar-Risālah* ", Beruit, 1st Edition, 1420 H.

115 "*Tafsīr Al-Qur'an Al-"Athīm* ", Vol. 1/498 publication of "*Dār Al-Fayhā'* ", Damascus and "*Dār As-Salām*", Riyādh, 2nd Edition, 1418 H.

comparison comes from his words: "This is like what the people of the book said: **'There is nothing on us regarding the illiterates.'** Verily, if they pay the *Jizyah* then their wealth is not permitted for you..." So what becomes clear here is that this verse is describing those who form a covenant upon keeping someone's wealth protected and then they violate that covenant and seize that wealth and add to their crime the sin of attributing it to their book. And we have clarified earlier that betrayal after a covenant of security has been issued to the disbelievers is unlawful (*Harām*). So there is no contradiction between the basic rule (*Asl*) and the verse being used.

And Al-Qurtubī said, **'There is nothing on us regarding the illiterates,'** It was said that when the Jews used to sell to the Muslims, they would say: 'There is nothing on us regarding the illiterates,' in other words, any sin because of doing wrong to them, 'due to their opposition of us.' And they claimed that this was in their book, so Allāh, the Powerful, the Mighty, declared them as liars, as He said: **"Of course..."** in other words, 'Of course upon them is the punishment due to their lying and permitting the wealth of the Arabs.' Abū Is'hāq Az-Zajāj said, 'And the words completed.' Then He said: **'Whoever fulfills his covenant ('*Ahd*) and fears..."** [116] And it is said that the Jews used to take loans from Arabs, then when the owners of the debt entered into *Islām*, the Jews said: 'There is nothing for you upon us, because you have left your religion. So your debt has fallen off of us.' And they claimed that that was the ruling of the *Tawrāt*, so Allāh, the Most High, said: **'Of course...'** refuting their saying. **'There is nothing on us regarding the illiterates,'** in other words, 'It is not as you say,' then He continued by saying: "**Whoever fulfills his covenant ('*Ahd*) and fears..."** the *Shirk*, then he is not from the liars. Rather, Allāh and His Messenger love him. A man said to Ibn 'Abbās: 'We purposely take from the wealth of the People of the Book; the chickens and the sheep and we say, 'There is no harm upon us in that.' So he said to him, 'This is like the People of the Book said: **'There is nothing on us regarding the illiterates.'** If they pay the *Jizyah*, then their wealth is not permitted to you except out of their good nature.' 'Abdur-Razzāq mentioned it from Mu'ammar from Abī Is'hāq Al-Hamdānī from Abī Sa'sa'ah that a man said to Ibn 'Abbās, and then mentioned it (i.e. the same narration)." [117]

And refer to "*Tafsīr Al-Baghawī* " as well as "*Adhwā' Al-Bayān*" from Ash-Shinqītī, may Allāh be merciful to him, for similar discussions on this topic. So this misconception is refuted with the clarification that the condemnation of Allāh towards the Jews was in their breaking of their covenant (*'Ahd*) while claiming that it was permitted to them in their book. And we affirm that both of these are blameworthy actions and that the betrayal of a covenant (*'Ahd*) is unlawful. Therefore the evidence from this verse does not contradict what has been proven in this essay; that being the basic rule (*Asl*) of the lawfulness of the blood and wealth of the disbelievers as long as they have no covenant (*'Ahd*) of *Amān*.

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[116] *Āl 'Imrān*, 76

[117] "*Tafsīr Al-Qurtubī* ", Vol. 4/117, publication of "*Dār Al-Kitāb Al-'Arabī* ", Beirut, 1st Edition, 1418 H.

3. The Kindness Towards the Disbelievers Who Are Not Aggressive or Hostile to the Muslims is the Basic Rule (Asl), Which Prohibits Shedding Their Blood or Seizing Their Wealth

And those who say this use the following verse as evidence:

لَا يَنْهَاكُمُ اللهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُم مِّن دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللهَ يُحِبُّ الْمُقْسِطِينَ

"Allâh does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allâh loves those who deal with equity." [118]

And this misconception is simple to refute with the text itself. As Allāh said: "**Allâh does not forbid you to deal justly and kindly...**" which is a removal of blame towards those Muslims who are kind and just to the disbelievers who have not fought them or expelled them from their homes. And it is known by common sense that the one who is not forbidden from doing something is not the same as the one who has been obligated to do something. Therefore, as this verse indicates, the kind treatment of those disbelievers who are not at war and who have not been aggressive towards *Islām* and the Muslims is permissible, and this does not contradict what we have clarified in this essay.

And furthermore, we affirm that the kind treatment and kindness has benefits for the *Da'wah* unto Allāh and for establishing a rapport with those disbelievers whose hearts my receive guidance. And the evidences for this are numerous; notwithstanding the meaning of this verse. However, saying this does not prohibit the blood, wealth and honour of the disbeliever who has no covenant (*'Ahd*) of *Amān*. And the benefit of this potential *Da'wah* does not make what is essentially permissible to be impermissible. And whoever says this is in need of specific evidence, which is not found in this verse. So let them produce their evidence for what they claim.

قُلْ هَاتُوا بُرْهَانَكُمْ إِن كُنتُمْ صَادِقِينَ

Say: "Produce your proof if you are truthful." [119]

As for the *Tafsīr* of this verse, then there is a difference of opinion amongst the *Salaf* about who is included in its address; whether it refers to woman and children, family members, and particular tribes or whether it was abrogated altogether by the verses of fighting.

For example, Ibn Kathīr said, "And His statement: **Allâh does not forbid you to deal justly and kindly with those who fought not against you...** In other words, they did not assist in expelling you. In other words, He does not forbid you from being good to the disbelievers who do not fight you in the religion, <u>such as the women and children and</u>

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[118] *Al-Mumtahinah*, 8

[119] *Al-Baqarah*, 111

the weak ones from them: **...to deal justly and kindly with those...** in other words, to be good to them." [120]

And Al-Qurtubī said, "This verse is a concession from Allāh, the Most High, in keeping ties with those who did not take the believers as enemies and did not fight them. Ibn Zayd said, 'This was in the beginning of *Islām*, (to be applied) during the non-hostilities while leaving the command to fight, but then later, it was abrogated.' Qatādah said: **...then kill the *Mushrikīn* wherever you find them...** [121] abrogated this.' And it is said that this ruling had a specific reason, which was the treaty (*Suhl*), but that when the treaty concluded after the Conquest of Makkah, then the ruling became abrogated, yet its inscription (in the Book) continued to be recited. And it is said that it is restricted to the successors of the Prophet **صلى ا عليه و سلم** and those whom between him and them was a covenant (*'Ahd*), which he did not break. This was stated by Al-Hasan. Al-Kalbī said, 'They are (the tribes of) Khuzā'ah and Banī Al-Hārith Ibn 'Abd Munāf.' and Abū Sālih said this and also said, 'They are Khuzā'ah (only).' And Mujāhid said, 'It is specified to those who believed but did not make *Hijrah*.' And it is said that what is meant by it is the women and children, because they are from those who do not fight. Therefore, Allāh gave permission to be good towards." [122]

And At-Tabarī said, "So some of them (i.e. the *Salaf*) said that those who are meant by it were those in Makkah who believed, but did not make *Hijrah*. So Allāh gave permission to the believers to have kindness and righteous conduct towards them..." – until he said, "And others said that who is meant by it are those other than the people who did not make *Hijrah*..." until he said, "And others said, instead it means the *Mushrikīn* of Makkah who did not fight the believers and did not expel them from their homes." [123]

And although the *Salaf* disagreed about who was addressed with this verse, even if we conclude that it applies generally to any Muslim and for all times, then this still does not contradict what we have clarified in this essay. Because stating that it is permissible to be kind to the disbelievers who have not been aggressive towards *Islām* or hostile towards the Muslims, does not necessitate the unlawfulness of their blood, wealth or honour as a basic rule (*Asl*). Rather, what this indicates is that leaving the shedding of their blood and seizure of their wealth is a permissible action and this is not disputed.

And the examples from the *Sunnah* where the Messenger of Allāh has demonstrated kindness and patience with those disbelievers who did not harm him – and even those examples where he did so with the disbelievers who were aggressive towards *Islām* – do not change the ruling of the lawfulness of the blood, wealth and honour, because all these examples prove is the permissibility of kindness towards them, and not the impermissibility of its opposite.

[120] "*Tafsīr Al-Qur'an Al-"Athīm* ", Vol. 4/350 publication of "*Dār Al-Fayhā'* ", Damascus and "*Dār As-Salām*", Riyādh, 2nd Edition, 1418 H.

[121] *At-Tawbah*, 5

[122] "*Tafsīr Al-Qurtubī* ", Vol. 18/53-54, publication of "*Dār Al-Kitāb Al-'Arabī* ", Beirut, 1st Edition, 1418 H.

[123] "*Tafsīr At-Tabarī* "

4. The Lawfulness of the Blood and Wealth of the Disbelievers Only Exists In the Battlefield

This point ties into the third misconception as it suggests that it is the hostility and aggression, which permits the blood and wealth of the disbelievers, whereas the peacefulness necessities the kindness. And this point has been refuted throughout the entire essay. Refer to the section: “Seizing the Wealth or Shedding the Blood of the *Muhārib* Disbelievers While There Is No Hostilities”. This is because it is the characteristic of disbelief (*Kufr*) itself, which permits the blood and wealth of the disbelievers and not the battle. And although it is the battlefield where this rule is most often applied, this does not mean that applying it outside of the battlefield is prohibited. And those who claim this are in need of specific evidence other than the general texts, which do not restrict the basic rule (*Asl*).

Another point, which indicates the incorrectness of this misconception, is that the basic rule (*Asl*) regarding the Muslim is that he is not fought except for self-defense. Therefore, it is not permissible to shed his blood unless he has transgressed against another Muslim. And the evidence for this is in His, the Most High’s, saying:

وَإِن طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِن بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ
إِلَى أَمْرِ اللَّهِ فَإِن فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

“And if two parties among the believers fall to fighting, then make peace between them both, but if one of them rebels against the other, then fight you (all) against the one which rebels until it complies with the Command of Allâh; then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allâh loves those who are equitable.” [124]

Therefore it is the rule regarding shedding the blood of one Muslim, who has transgressed against another, that his blood only become permissible to shed in self-defense. And this discussion relates to the differentiation between the disbelievers – whose blood is permitted to shed on the basis of their disbelief versus the Muslims – whose blood is only permitted to be shed in self-defense. And we see from the discussions of the jurists, that the Muslim rebels (*Bughāt*), who rebel against the proper Muslim authority, are to be fought in the battlefield only. And this is only to be done once it is clear that they have rebelled and have begun to transgress; however, even then they are not treated the same as the disbelievers who are fought.

Ibn ‘Umar, may Allāh be pleased with him, said: “The Messenger of Allāh **صلى ا عليه و سلم** said, ‘O Ibn Umm ‘Abd, do you know what the ruling of Allāh is regarding those who transgress from this nation?’ He said, ‘Allāh and His Messenger know best.’ He said, ‘Their injured one is not finished off (i.e. killed) and their captives are not executed and their fleeing ones are not pursued and their *Fay’* is not divided (i.e. distributed).” And Ibn Hajar said, ‘(This has been) narrated by Al-Bazzār and Al-Hākim, and he (i.e. Al-Hākim) authenticated it, but he was mistaken, because in its chain there is Kawthar Ibn Hakīm and he is *Matrūk* (i.e. abandoned, not narrated from). But this has been

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[124] *Al-Hujurat*, 9

authentically narrated from 'Alī from several *Mawqūf* (i.e. narrations which stop at the companion) paths. Ibn Abī Shaybah and Al-Hākim narrated this (i.e. from 'Alī)." [125]

And As-San'ānī said, "And this *Hadīth* also indicates that the captive of the Muslim rebels (*Bughāt*) is not to be killed. They (i.e. the scholars) said, 'This is restricted to the *Bughāt*, because the fighting against them is only to repel them from waging war.' And the *Hadīth* also indicates that the one from them who flees is not to be pursued and the outward appearance is that this applies even if he is withdrawing to his group, and this was the opinion of Ash-Shāfi'ī who said, 'Because the point is to repel them at that instance, and it has been accomplished.' And the Hāduwīs and Hanafīs took the opinion that the one fleeing to a group is to be killed as we cannot be secure regarding his return. However, the *Hadīth* rejects this saying and likewise that which has passed from the words of 'Alī, upon whom be peace." [126]

And An-Nawawī said, "And he – in other words, the *Imām* – does not fight until he sends a trustworthy, intelligent adviser to them, asking them what is the cause of their aggression, then if they mention a wrongdoing or some misunderstanding, then he removes it (i.e. corrects that wrongdoing or clarifies the misunderstanding). Then if they persist – in other words, after the removal of the misunderstanding or they do not mention any misunderstanding, rather they rebel for some worldly reason, such as taking over the governance for instance – then he advises them, then declares the fighting against them." [127]

So this clarifies the error of those who have fallen into this misconception. And it is sufficient to demonstrate this mistake and the refutation of it, by mentioning that this rule applies to the Muslims and not the disbelievers. And the evidence from this is that the disbeliever's blood is permitted to be shed, due to his characteristic of disbelief (*Kufr*), whereas the Muslim's blood is only permitted to be shed in self-defense. And the error of those who attempt to make the blood and wealth of the disbelievers equal to that of the Muslim has been clarified earlier.

5. The Basic Rule (Asl) of Shedding the Blood and Seizing the Wealth of the Disbelievers is Restricted to Self-Defense

So this is the logical conclusion based on the preceding four misconceptions. And this misconception also implies that there should be no offensive *Jihād* (*Jihād Talab*) either, since according to this concept, shedding the blood and seizing the wealth could not take place until the Muslims were attacked first; making their *Jihād* defensive (*Jihād Dafā'*).

And those who claim this, use the following as evidence:

وَإِن جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا

But if they incline to peace, you also incline to it... [128]

[125] "*Subul As-Salām* ", Vol. 3/524 publication of "*Dār Al-Kitāb Al-'Arabī* ", Beirut, 13th Edition 1422 H.

[126] "*Subul As-Salām* ", Vol. 3/526 publication of "*Dār Al-Kitāb Al-'Arabī* ", Beirut, 13th Edition 1422 H.

[127] "*Mughnī Al-Muh'tāj* ", Vol. 4/126

[128] *Al-Anfāl*, 61

And they use as evidence, the statement of the Prophet صلى ا عليه و سلم, ***"Do not wish to meet the enemy…"*** [129]

And in his refutation of this misconception, the *Shaykh*, 'Abdul-Qādir Ibn 'Abdul-'Azīz, may Allāh free him, said:

"And this is the condition of those who believe in some of the Book while disbelieving in some; those who used as evidence, one of the evidences in the matter, while leaving the remaining evidences, as I mentioned in the fourth principle from 'The Principles of Holding Steadfast to the Book and the *Sunnah*'. And the response to this doubt is from different points:

"**The First:** The Messenger of Allāh صلى ا عليه و سلم and his companions, who are the best of this nation, may Allāh be pleased with them, did not hold these texts upon the point, which those ones understood from it, in that they mean the leaving of the *Jihād At-Talab*, as the Prophet صلى ا عليه و سلم fought the Arabs and then went out to fight the Romans at Tabūk. And he صلى ا عليه و سلم fought in nineteen battles. [130] And he personally participated in fighting in eight of them. [131] As for the delegations and the platoons, which he sent out but did not go out in personally, then they numbered thirty-six in the narration of Ibn Is'hāq, and others mentioned even more than that. [132] Then the companions battled, after him صلى ا عليه و سلم, the Persians and the Romans and the Turks and the Copts and the Barbars and others from what is known. So this one who used these texts as evidence to invalidate the *Jihād At-Talab*; we say to him:

"This thing that you understood; is it something that the Prophet صلى ا عليه و سلم and his Companions understood, or not?" Then if he says that they did not understand it, we say to him, "You have understood that which they did not understand, therefore you have judged upon yourself with misguidance and that what you have understood was not from our religion." This is because the religion was completed in his صلى ا عليه و سلم's lifetime. Allāh, the Most High, said: **'This day, I have perfected your religion for you…** [133] And this understanding of yours is rejected and unsupported: 'Whoever performs an action, which does not comply with our affair, then it will be rejected.' [134] And with this false understanding, you have left the guidance of the Messenger صلى ا عليه و سلم and the path of his companions.' He, the Most High, said:˝**And whoever contradicts and opposes the Messenger after the right path has been shown clearly to him,**

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[129] Agreed upon

[130] Agreed upon from Zayd Ibn Al-Arqam

[131] Narrated by Muslim from Buraydah

[132] "*Fat'h Al-Bārī* ", Vol. 7/279 – 281 & "*Sahīh Muslim Bi Sharh' An-Nawawī* ", Vol. 12/195

[133] *Al-Mā'idah*, 3

[134] Narrated by Al-Bukhārī from 'Ā'ishah, may Allāh be pleased with her

and follows other than the believers' way. We shall keep him in the path he has chosen, and burn him in Hell – and what an evil destination. [135]

"But if he says that they did understand the same thing that he understood, then we say to him: "Their history was upon that which contradicts this understanding. So either it is the truth and they went against it – and no one would say this, except for a *Zindīq* (i.e. one category of hypocrite) – or it is the falsehood and the misguidance, and therefore this was not their understanding nor their actions."

"**The Second:** As for Allāh the Most High's saying: **'But if they incline to peace, you also incline to it…** [136] Then the sayings of the predecessors (*Salaf*) concerning it, will come within the tenth section.

"**The Third:** And as for the statement of the Prophet صلى ا عليه و سلم, 'Do not wish to meet the enemy…', then it was narrated by Al-Bukhārī from 'Abdullāh Ibn Abī Awfa: 'On one of the days in which the Messenger of Allāh صلى ا عليه و سلم faced therein, he waited until the sun descended. Then he stood up in front of the people to address them and said, 'O people, do not wish to meet the enemy and ask Allāh to be pardoned. Then if you face them, then be patient and know that the Paradise is beneath the shade of swords.' Then he said, 'O Allāh, Revealer of the Book and Dispenser of the clouds and Defeater of the allied tribes, defeat them and give victory to us over them." [137] I say: It is clear from the text of this *Hadīth*, that the Prophet صلى ا عليه و سلم said this in one of his battles, due to his saying, "On one of the days in which….faced therein…" In other words, 'the enemy' as Muslim narrated it. And his saying, "Then if you face them, then be patient…" as well as his statement: "…defeat them and give victory to us over them." So how can this *Hadīth* be used as evidence for leaving the *Jihād*, while he صلى ا عليه و سلم only said it during the battle? Then the *Hadīth* includes inciting (his companions) upon fighting the enemy. And that is in his statement, "…and know that the Paradise is beneath the shade of swords." And it is known that the fighter would not be beneath the shade of swords except during the clashing against his enemy while each of them is upon his companion with his sword." [138]

"So the fact that he صلى ا عليه و سلم said this *Hadīth* while heading towards the fighting and the fact that he incited (his companions) upon the fighting in the very same *Hadīth*, indicates that the forbiddance of wishing to meet the enemy is not in absolute terms and that it was merely from a specific point. And that is the warning against being satisfied and being overconfident with strength. And it is what Ibn Hajar pointed to in his explanation of this *Hadīth*. He said: 'He only forbid the wishing to meet the enemy due to what is in that from the state of being pleased and having trust upon the self and being sure of the strength and underestimating the enemy. And all of this contradicts the being cautious and having determination. And it is said: "This forbiddance is held when doubt exists about the benefits or the possibility of harm. Otherwise, the fighting is a virtue and

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[135] *An-Nisā'*, 115

[136] *Al-Anfāl*, 61

[137] *Hadīth* #2,965 & #2,966

[138] "*Fat'h Al-Bārī* ", Vol. 6/33

an obedience." [139] And An-Nawawī said something similar to this. [140] I say: And from that which indicates that the forbiddance in wishing to face the enemy is not in absolute terms, was the desire of Anas Ibn An-Nadhr, may Allāh be pleased with him, to face the enemy in the presence of the Messenger of Allāh **صلى ا عليه و سلم**, yet he did not object to him (expressing) that."

"And that comes in what was narrated by Al-Bukhārī and Muslim from Anas Ibn Mālik, may Allāh be pleased with him, who said. "My uncle, Anas Ibn An-Nadhr, may Allāh be pleased with him, was absent from the fighting on the Day of Badr, so he said, 'O Messenger of Allāh, I was absent in the first fighting wherein you fought the polytheists (*Mushrikīn*). If Allāh permits me to participate in the (next) fight against the polytheists (*Mushrikīn*), then Allāh shall see what I will do.' Then when it was the Day of Uhud, the Muslims became exposed. So he said, 'O Allāh, I offer my excuse to you on behalf of what these ones have done...' – in other words, his companions – "...and I free myself from what these ones have done...' – in other words, the polytheists. Then he advanced and met Sa'd Ibn Mu'āth. So he said to him, 'O Sa'd Ibn Mu'āth, the Paradise, by the Lord of An-Nadhr, I detect its fragrance coming from the side of Uhud!' Sa'd said, 'Then I was not able, O Messenger of Allāh, to do what he did.' Anas said, 'Later, we found him with eighty-odd wounds from spears, or arrow wounds, and we discovered that he was killed and that the *Mushrikīn* had made an example of him (i.e. by mutilation). So no one could recognize him except his sister who (identified him) from his finger tips.' Anas said, 'We used to think – or assume – that this verse was revealed about him and about the likes of him: **Among the believers are men who have been true to their covenant with Allâh, of them some have fulfilled their obligations...** [141] I say: So this great companion desired to face the enemy, and was truthful towards Allāh in that. And with this, you can see that the forbiddance from wishing to face the enemy is only from the point of being satisfied and from pride, which are both blameworthy. And with this, you see the falsehood of this doubt, which some of the deviants use as a basis to reject *Jihād At-Talab*, which Allāh, the Most High, has made a means to make the religion dominant."

"He, the Most High, said: **And fight them until there is no more *Fitnah* and the religion (worship) will all be for Allâh.** [142] And He, the Most High, said: **'...to make it dominant over all religions even though the *Mushrikûn* hate (it).'** [143] And He, the Most High, said: **'...until they pay the *Jizyah* with willing submission, and feel themselves subdued.'** [144]

"Ibn Al-Qayyim, may Allāh be merciful to him, said, 'And the point of the *Jihād* is only so that the Word of Allāh will be the Most High, and so that the religion would all be for Allāh" And he said, "And included in the religion being all for Allāh is the humiliation of

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139 "*Fat'h Al-Bārī* ", Vol. 6/156

140 "*Sahīh Muslim Bi Sharh' An-Nawawī* ", Vol. 12/45 - 46

141 *Al-Ah'zāb*, 23

142 *Al-Anfāl*, 39

143 *At-Tawbah*, 33 & *As-Saff*, 9

144 *At-Tawbah*, 29

the disbelief (*Kufr*) and its people and in their being subdued and in implementing the *Jizyah* upon the leaders of its people and the enslavement upon their necks as this is from the religion of Allāh. And nothing would contradict this except leaving the disbelievers in their positions of power and to establish their religion as they please so that they would have the power and the (predominant) word.' [145] " [146]

Conclusion

And the summary of what has been presented in this essay is that the basic rule (*Asl*) of the blood, wealth and honour of the disbelievers is that they are lawful (*Halāl*). And this has been affirmed by evidence from the *Qur'ān* and *Sunnah*, the rules of language and jurisprudence, as well as by the *Salaf* and the scholars who succeeded them. And certain clarifications have come from the leaders of *Tafsīr* and specialists in refuting the contemporary misconceptions. So let the apologists, defeatists, and "modernist"/ "moderate" Muslims who have been misguided by the disbelieving Orientalists etc. recognize and learn the correct ruling. And let them see how the evidences are reconciled together in support of the truth rather than being used to cause doubts (*Shubuhāt*) by means of distortion and misinterpretation.

And we close by encouraging the reader to do further research into the issues we have raised and to verify our work by searching our references to check for the accuracy of our translations and quotations.

We ask Allāh to grant his slaves victory over their disbelieving enemies and to reward his *Mujāhidīn* with the best in this life and in the hereafter. And may the Peace and Blessings of Allāh be upon our Prophet, Muhammad and upon his family and his companions until the Last Day.

Completed on 6th day of Rajab, 1425 H.

[145] "*Ah'kām Ahl Ath-Thimmah* ", by Ibn Al-Qayyim, Vol.1/18

[146] From "*Al-'Umdah Fī I'dād Al-'Uddah Lil-Jihādi Fī Sabīl-illāhi Ta'āla* " Pg. 283-285